

THE GOVERNANCE OF CIVIL AVIATION AUTHORITIES IN LATIN AMERICAN COUNTRIES

EVIDENCE FROM ICAO'S NORTH AMERICAN, CENTRAL AMERICAN AND CARIBBEAN AND SOUTH AMERICAN REGIONS

OECD REGULATORY POLICY WORKING PAPERS

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ALEXIS DURAND
ANNA PIETIKAINEN

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The governance of civil aviation authorities in Latin American countries

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The Governance of Civil Aviation Authorities in Latin American Countries

Evidence from ICAO's North American, Central American and Caribbean and South American regions

Alexis Durand* and Anna Pietikainen*

ABSTRACT

Good governance is a building block for the performance of regulators, including civil aviation authorities. This paper reports the results of a mapping of governance arrangements across 29 civil aviation authorities in Latin American and Caribbean countries, with the International Civil Aviation Organization's South American and North American, Central American and Caribbean regions.

Applying the methodology of the OECD Indicators on the Governance of Sector Regulators, the results provide a birds-eye view of the independence, accountability and scope of action of participating authorities. This paper explains the indicator methodology, summarises key data points, and presents high-level takeaways. It highlights the importance of *de jure* provisions to support independence and leadership arrangements to reduce undue influence. Furthermore, there is an opportunity to strengthen accountability relationships, including through improved performance assessment and reporting.

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JEL Classification: N46, L98, L93, L50, K23, D73.

Key words: Regulatory governance, OECD, better regulation, Latin America, regulation, independence, accountability

* OECD, France

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Acronyms and abbreviations

CAA	Civil Aviation Authority
ICAO	International Civil Aviation Organization
NACC	North American, Central American and Caribbean regional office
NAM/CAR	North American, Central American and Caribbean
NER	Network of Economic Regulators
OECD	Organisation for Economic Co-operation and Development
PMR	Product Market Regulation indicators
SAM	South American

1 Introduction

The OECD *Best Practice Principles on the Governance of Regulators* acknowledges that regulators that are efficient, effective, and supported by high-quality regulatory management tools are better placed to administer and enforce regulations (OECD, 2014^[1]). The OECD sees the good governance of regulators as one building block in the foundation of high-quality regulatory environments, which ultimately aim to contribute to positive outcomes for markets and consumers. Strong governance supports a regulatory authority's legitimacy and integrity, and is crucial for ensuring that they make technical, evidence-based and objective decisions without conflict of interest, bias or improper influence.

Good governance becomes even more important in the context of a crisis like COVID-19, which hit the aviation sector particularly hard. The crisis has also shown that effective government action is more important than ever – not only for public health outcomes but also for economic recovery. Strong institutions with robust governance help sectors weather crises, and the same institutions will help the most affected sectors recover and build resilience.

To understand how regulators around the world reflect good governance principles, the OECD Network of Economic Regulators (NER) developed the Indicators on the Governance of Sector Regulators. These indicators capture high-level information on the independence and accountability of regulatory authorities, as well as their scope of action. The indicators reflect multiple *de jure* arrangements as grounded in law, as well as some *de facto* arrangements that exist in practice, which together determine the independence and accountability of regulatory authorities in their day-to-day work. The International Civil Aviation Organization's (ICAO) North American, Central American and Caribbean (NAM/CAR) and South American (SAM) regions asked the OECD to apply the indicators to civil aviation authorities in the Latin America and Caribbean region. This exercise allows participants to assess alignment with good practices and identify areas for institutional reform. Leveraging the knowledge and expertise of the NER and the OECD, the indicators enable data-driven assessment of regulators' governance across jurisdictions.

This report presents the results for the OECD Indicators on the Governance of Sector Regulators for the civil aviation authorities in the NAM, CAR and SAM regions. It provides an overview of the structure and contents of the indicators, followed by the methodology used for their development. Finally, it presents the values based on the data collection and quality check conducted by the OECD in co-operation with the participating authorities during April-October 2021.

Indicators offer an overview of good governance, but governance is context-dependent. Existing conditions, such as market characteristics and policy frameworks, will influence which governance arrangements make sense within a particular jurisdiction. The diverse characteristics of the authorities in the sample, described further in this document, suggest the presence of very different situations and needs across jurisdictions. For that reason, the reader should interpret results with care and within context.

2 Methodology

The OECD Indicators on the Governance of Sector Regulators are a tool for the comparative assessment of the strength of regulators' governance arrangements. The indicators highlight patterns in the governance arrangements of sector regulators by providing a uniform quantitative scoring system that enables comparisons across sectors and countries. A standard survey collects the information that forms the basis of the indicator scores. The survey questions are anchored to the normative framework provided by the OECD Best Practice Principles on the Governance of Regulators and additional literature on the independence of regulators produced by the OECD Network of Economic Regulators (NER) (Box 2.1), allowing for benchmarking against good practice.

The NER developed the Indicators on the Governance of Regulators to capture an overview of the governance arrangements of sector regulators, covering both *de jure* and *de facto* arrangements. While *de jure* arrangements are relatively easy to capture, as they are defined in legislation, *de facto* arrangements are more difficult to identify and define as they relate to a regulatory authority's actions, decisions and behaviours. The indicators capture some aspects of these *de facto* arrangements, by asking whether certain practices that often are not enshrined in law are in place.

The Indicators, which here are applied to civil aviation authorities, had an original focus on economic regulators, i.e. on institutions or bodies that are authorised by law to exercise regulatory powers over the sector for the purpose of setting prices and/or improving the operation of the market so that consumers have access to secure services and service providers receive a reasonable rate of return on their investment. Data collection for economic regulators occurred in two vintages – one in 2013 and one in 2018.¹

This project applies the Indicators to a new group of authorities – civil aviation authorities in the International Civil Aviation Organization's (ICAO) North American, Central American, Caribbean and South American regions. The questionnaire, while applied thus far to economic regulators, has a broader applicability. It reflects a vision of good governance that applies in other contexts, emphasising governance elements such as transparency and evidence-based decision making that are important goals for all public bodies. Its foundations lie in normative materials geared towards regulators broadly defined, including the Best Practice Principles on the Governance of Regulators. The questionnaire was translated into Spanish, but otherwise remained unaltered. While the questionnaire remains the same between economic regulators and civil aviation authorities, this exercise is not meant to suggest that very different groups of regulatory authorities should be held to the same standards.

The indicators do not imply a direct relationship with regulator performance and sector outcomes. The relationship between governance and performance is complex, with a wide range of influencing factors, including market conditions and socio-political factors. For civil aviation authorities, it is important to note that governance does not necessarily correlate to the authority's safety oversight capacity, other operational capacity, or sector outcomes more generally.

The Indicators on the Governance of Sector Regulators complement the OECD Product Market Regulation (PMR) indicators, designed to gauge the openness to competition of markets in participating countries.

Box 2.1. The OECD Network of Economic Regulators

What makes a “world class regulator” that is equipped to face the future? Since 2013, the OECD’s Network of Economic Regulators (NER) has been addressing this question by collecting and disseminating comparative data and good practices, providing rigorous analysis and offering a platform for policy dialogue. As a subsidiary body of the OECD’s Regulatory Policy Committee, the NER facilitates peer discussion and exchange among over 70 regulators from across OECD and non-member countries that oversee utility sectors such as e-communications, energy, transport and water.

The recognition that good governance supports the performance of regulators, guides the work of the NER. The NER has driven the agenda of the governance and performance of regulators globally since its creation:

- developing guidance to support the establishment and reform of regulatory agencies and to assist regulators evaluate and improve their governance arrangements to become more effective (e.g. Best Practice Principles on the Governance of Regulators; Practical Guidance on Creating a Culture of Independence).
- developing comparative cross-country data (e.g. Indicators on the Governance of Sector Regulators) on the governance and the independence of regulators allowing for benchmarking and the identification of trends across countries, regions or sectors.
- charting the main drivers of the performance of regulators and supported regulators via peer reviews that put forward targeted policy recommendations to enhance their external and internal governance (to date, Performance Assessment Reviews of 12 regulators across 7 countries have been carried out).
- exploring the future of regulation and the regulation of emerging technologies in the publication “Shaping the Future of Regulators: The Impact of Emerging Technologies on Economic Regulators”.
- pioneering the application of behavioural insights to the work of regulators and regulatory policy.

This body of knowledge and experience make the NER the premier global forum to continue advancing our understanding and support to regulatory performance and governance of economic regulators.

For more information see <http://www.oecd.org/gov/regulatory-policy/ner.htm>.

Indicator content and structure

A questionnaire, completed by civil aviation authorities and its corresponding economic government related bodies then reviewed by the OECD Secretariat, forms the basis of the indicator scores, which are calculated by averaging equally weighted questions and sub-questions on a standard questionnaire. The indicators for each sector addresses three governance components:

- **Scope of action:** This component sheds light on the range of activities that the regulator performs, including tariff-setting, issuing standards, enforcement activities and sanctioning powers.
- **Independence:** This component maps the degree to which a regulator operates independently and with no undue influence from both the political power and the regulated sectors.

- **Accountability:** This component covers the accountability of the regulator vis-à-vis various stakeholders, including the government, parliament, the regulated industry and the general public. It captures the adherence to regulatory management tools and looks at the collection, use, publication and reporting of performance information.

The 2018 Indicators on the Governance of Sector Regulators map the governance arrangements of economic regulators in 47 countries and five network sectors (energy, e-communications, rail and air transport, and water). The database contains data from 163 distinct economic regulators.

Data collection and validation

In line with the usual indicator methodology, the OECD Secretariat worked closely with the civil aviation authorities to collect, validate and finalise questionnaire responses in preparation for the preparation of an aggregated database and the calculation of scores. After participating authorities designated focal points with ICAO's NACC and SAM offices, the OECD Secretariat distributed the questionnaire to these contacts. Each participant had one month to complete the questionnaire, although some received extensions.

The OECD Secretariat then started its process of data validation, reviewing the responses received and identifying areas where more evidence was needed. Data validators assessed the respondents' understanding of the questions, adherence to drop-down menu categories for closed-ended questions, accuracy of answers, and completeness of responses. Data validators consulted a range of materials during the data validation process, including national legislation, relevant publications, and regulator websites. When the team proposed changes or encountered questions, they liaised with the focal points at the relevant authority. The OECD Secretariat finalised each questionnaire with the relevant authority. States that were unable to furnish requested information within agreed project timelines or fell outside of the Latin American states category were not included in the database.

Calculating composite indicators

The indicators, based on a questionnaire, allow for comparison between authorities based on individual questionnaire responses and composite indicators. In line with the PMR methodology, answers are scored on a scale from zero to six as detailed in the schemata in Annex B:

A score closer to zero in the independence and accountability components indicate that the regulator has governance arrangements in place that more closely reflect the good practices.

For the scope of action component, a score closer to zero indicates that the regulator engages in a broader range of the activities (2019^[2]).

To create the composite indicator for each authority, equal weights are assigned to all questions and sub-questions. The methodology uses equal weighting to avoid imposing judgements about the importance of elements within the composite indicators, but this should not be understood as showing that components lack weights entirely. While the indicators do not reflect the relative importance of its components, it provides an indication of the relative degree to which a regulator's governance arrangements reflect good practice, which can be supplemented by observed differences within the underlying data. Other methods not applied to the indicators can capture the contribution of the indicator components to the final composite; the OECD Handbook on Constructing Composite Indicators reviews equal weighting and alternative methods for weighting elements of composite indicators (Nardo et al., 2005^[3]).

3 Results

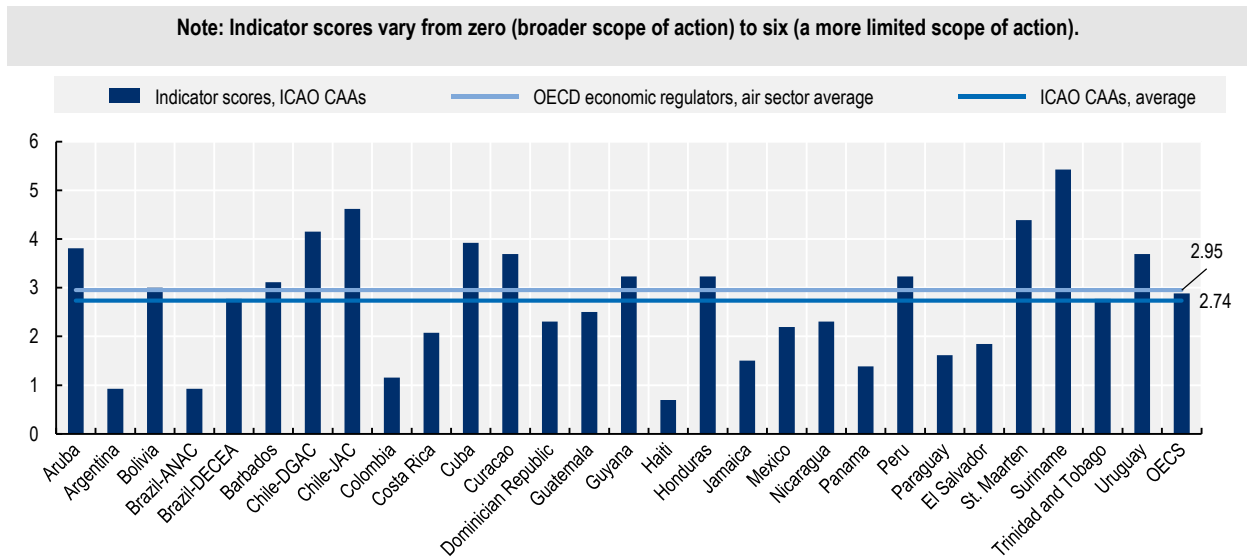
Composition

The dataset includes 29 civil aviation authorities within 26 countries or territories and 1 regional authority (the Eastern Caribbean Civil Aviation Authority encompassing 6 States: Antigua & Barbuda, Dominica, Grenada, St. Lucia, St. Kitts & Nevis and St. Vincent & the Grenadines). These authorities are within ICAO’s North America, Central America and Caribbean (NAM/CAR) region and the South American (SAM) region. A full list of participating authorities can be found in Annex A.

Governance component on scope of action

Indicator scores in the scope of action component show high variability in the scope of action among the civil aviation authorities in the sample. The range of the indicators, representing the distance between the authorities with the narrowest and broadest scope of action, is 4.73. This range is greater than that found among OECD economic regulators of the air sector (with a range of 4.15).

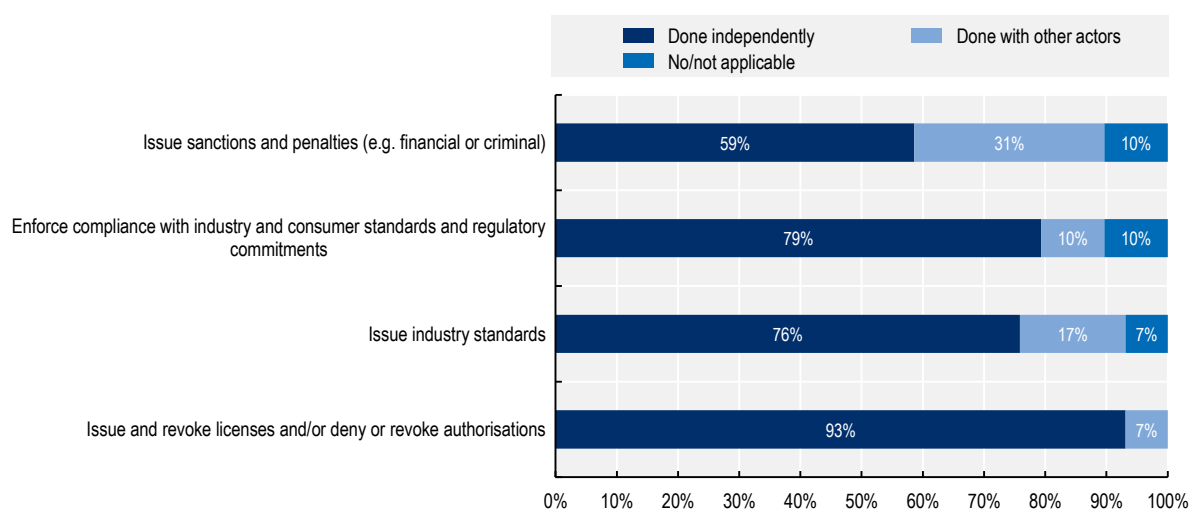
Figure 3.1. Indicator scores show high variability in scope of action among authorities



Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

While variability among the sample is high, the authorities tend to share certain common functions (Figure 3.2). The most common functions are: 1) issuing and revoking licenses and/or denying or revoking authorisations, 2) issuing industry standards, 3) enforcing compliance with industry and consumer standards and regulatory commitments, and 4) issuing sanctions and penalties (e.g. financial or criminal). Most conduct these activities above independently, although many issue sanctions and penalties with other actors.

Figure 3.2. Authorities tend to share certain common functions



Note: Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Governance component on independence

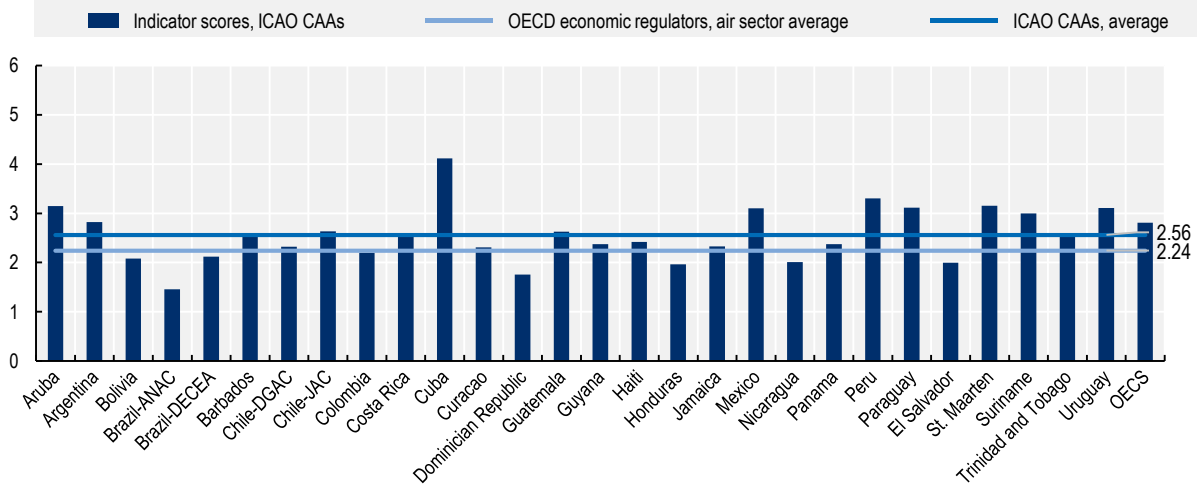
In the aviation sector, the appropriate degree of independence for civil aviation authorities depends on national and institutional context. In general, regulators need to make and implement impartial, objective and evidence-based decisions that will inspire trust in public institutions. OECD work (OECD, 2014^[1]; OECD, 2017^[4]) (OECD, 2016^[5]) has detailed governance arrangements that safeguard independence in support of these outcomes. This section reflects what key data points on formal independence, operational and financial autonomy, and leadership reveal how such arrangements are reflected among participating authorities.

Of course, independence is not a static characteristic, but rather one that can be continually exposed to stress by external parties, in particular at specific “pinch-points” that can range from decisions on the budget, resources or leadership of the regulator, specific regulatory decision making by the authority, to the political cycle. With this in mind, there is no perfect or bulletproof combination of legal and cultural characteristics that will protect regulatory independence in any situation or context.

Indicator scores show convergence in independence arrangements among authorities, with a relatively small range between the highest and lowest scores (2.66) as compared to the accountability component (with a range of 4.91) (Figure 3.5). The average independence indicator for the civil aviation authorities (2.56) is close to that of OECD economic regulators of the air sector (2.24), suggesting proximity between these two groups.

Figure 3.3. Indicator scores show convergence in independence arrangements among authorities

Note: Indicator scores vary from zero (closer to good practice) to six (farther from good practice). A higher score indicates that a regulator is further from good practice in the independence component.



Note: Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

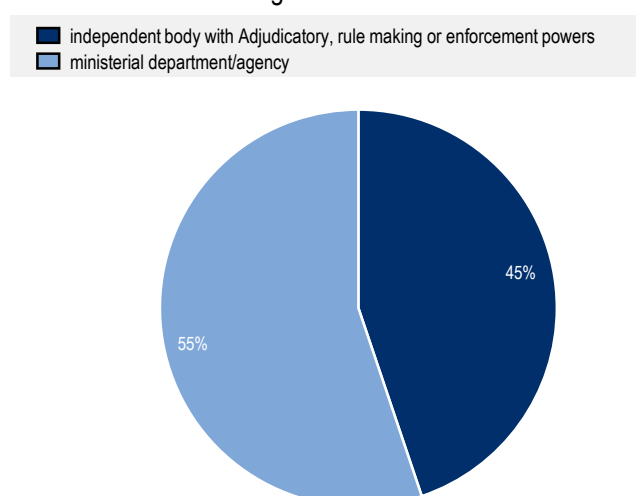
An elementary measure of *de jure* independence is the legal status of the regulator relative to the executive. Through legislation, a regulator can be set up as an independent body outside the ministry, or as an administrative unit under the ministry. In many network sectors, the creation of legally independent regulators is a common technique to provide a credible commitment to long-term goals beyond short-term political cycles. The context of civil aviation authorities is different, although creating a legally independent regulator may still be attractive, for example, in jurisdictions where the authority has oversight over a flag bearer. The 2012 Recommendation of the OECD Council on the Regulatory Policy and Governance outlines conditions when independent regulatory agencies may be appropriate, where:

- “There is a need for the regulatory agency to be independent in order to maintain public confidence;
- Both the government and private entities are regulated under the same framework and competitive neutrality is therefore required; and
- The decisions of regulatory agencies can have significant economic impacts on regulated parties and there is a need to protect the agency’s impartiality” (OECD, 2012^[6]).

Fewer than half of civil aviation authorities in the sample are independent bodies (Figure 3.4). The civil aviation sample shows fewer independent regulators than in the sample of economic regulators of the air sector in OECD countries (where 50% are independent).

Figure 3.4. Fewer than half of authorities in the sample are independent bodies

Answers to the question “What is the status of the regulator?”



Note: Authorities in the following countries or region report that they are independent – Bolivia, Brazil (ANAC), Colombia, Costa Rica, Dominican Republic, Haiti, Honduras, Jamaica, Nicaragua, Panama, El Salvador, Trinidad and Tobago, and the OECS (the ECCAA).

Annex B contains the indicator values for participating CAAs.

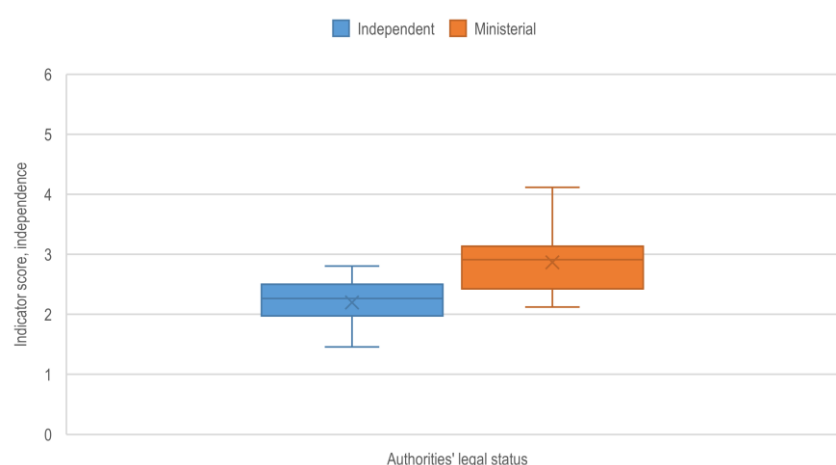
Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Formally independent authorities are not just independent in name only, but tend to show more independence governance arrangements too (Figure 3.5). Ministerial dependant civil aviation authorities have a higher average independence score (indicating independence governance arrangements further from good practice) than independent civil aviation authorities. Results suggest a relationship between formal independence and the extent to which an authority reflects other independence arrangements.

Figure 3.5. Formally independent regulators tend to also show more independence governance arrangements

Note: Indicator scores vary from zero (closer to good practice) to six (farther from good practice). A higher score indicates that a regulator is further from good practice in the independence component.

Boxplot showing independence indicator scores by regulator status



Note: Annex B contains the indicator values for participating CAAs.

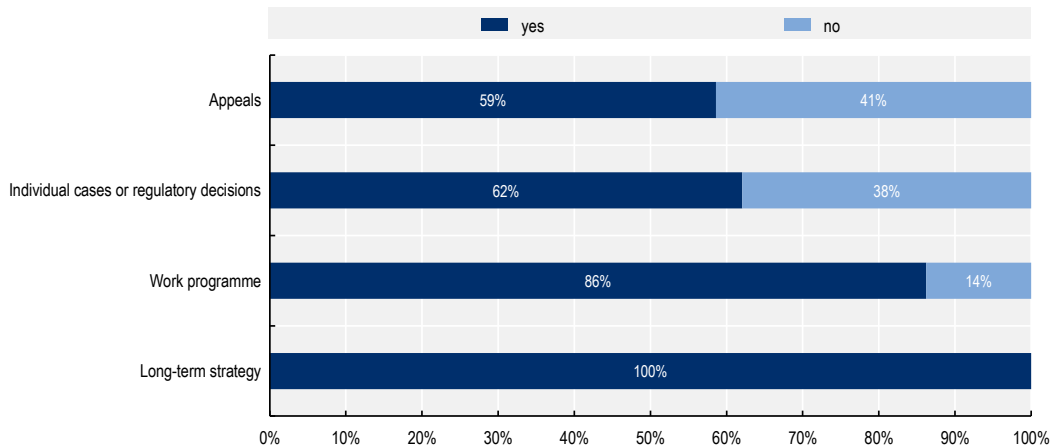
Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Operational and financial autonomy

Most authorities receive guidance from government on their work (Figure 3.6). While receiving guidance from the government on its long-term strategy can ensure that its strategy is in line with broad policy objectives, more direct government involvement in the regulator’s work programme, individual regulatory decisions and appeals processes limits independence.

Figure 3.6. Most authorities receive guidance from government on their work

The regulator can receive guidance from the government regarding the following categories of decision making:



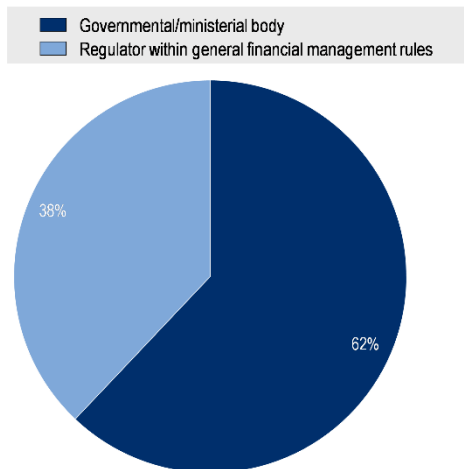
Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

The way in which a regulator is funded may affect its ability to carry out its mandate independently. Not only does a regulator need sufficient funding to deliver upon its objectives, but the funding should also be determined in a way that prevents undue influence.

Most authorities do not manage their own allocation of expenditures (Figure 3.7). The extent to which a regulator can manage its funds autonomously is an important component of financial independence, and interference with the regulator’s use of budget should not occur as long as the regulator remains within the rules and provides legitimate justification.

Figure 3.7. Most authorities do not manage their own allocation of expenditures

Answers to the question “Which body is responsible for deciding the regulator’s allocation of expenditures?”



Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

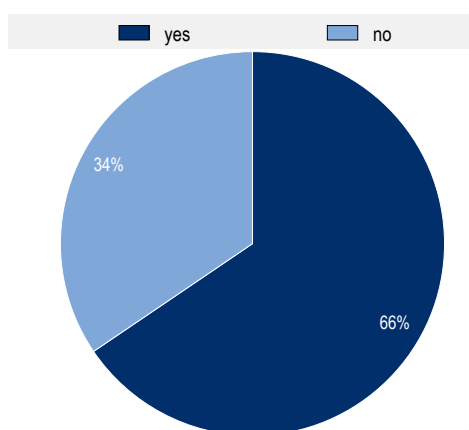
Leadership

Boards or agency heads are usually ultimately responsible for the authorities' decisions, and therefore potentially subject to greater pressure from government and industry bodies than professional staff (OECD, 2016^[5]). Sound leadership arrangements can prevent potential conflicts of interest, and thereby bolster the independence of the board or head of the agency.

Most countries have legislation specifying the skills profile of leadership (Figure 3.8). Specifying the necessary competences of the leadership of an authority can help ensure that leadership with special skills and expertise head authorities.

Figure 3.8. Most countries have legislation specifying the skills profile of leadership

Answers to the question “Does the legislation define the skills required by the agency head/board members?”



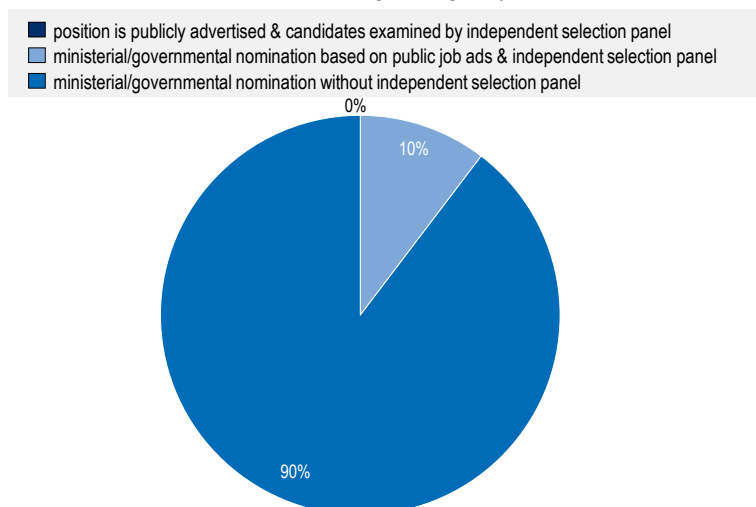
Note: Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Independent selection panels in leadership selection procedures are rare (Figure 3.9). Independent selection panels (not composed of members of government) can provide a “check” on the government’s power to nominate and appoint leadership.

Figure 3.9. Independent selection panels in leadership selection procedures are rare

Answers to the question “What is the process for selecting the agency head/board members?”



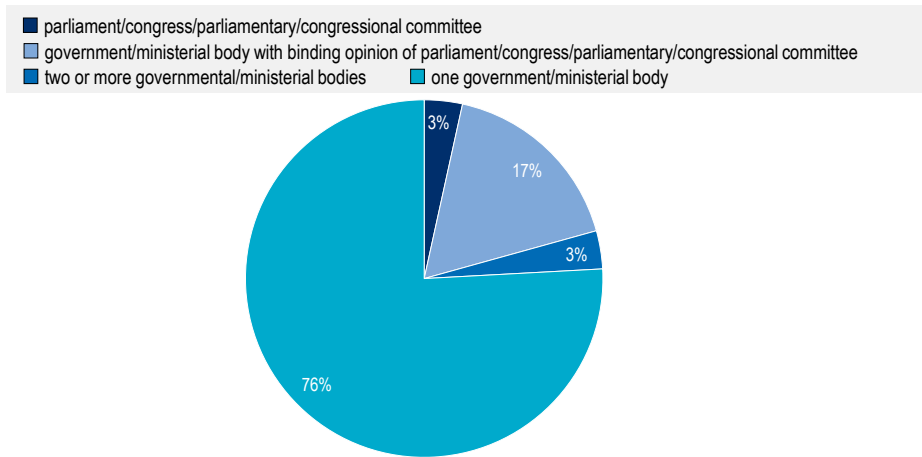
Note: Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

The final appointment of leadership is usually done by government, without legislative involvement (Figure 3.10). Involvement of the legislature can provide a “check” on the government’s power to appoint leadership.

Figure 3.10. The final appointment of leadership is usually done by government, without legislative involvement

Answers to the question “Which body has the legal authority to make the final appointment of the agency head/board members?”

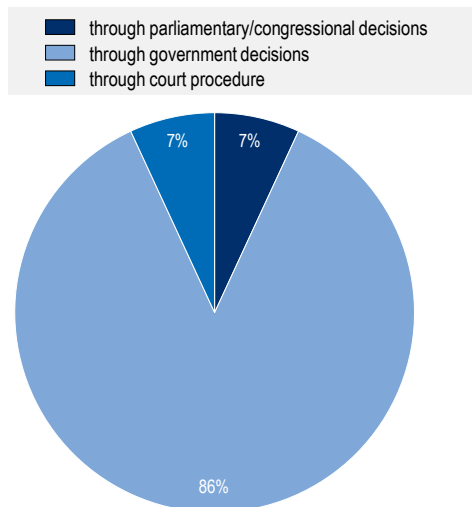


Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

In most countries, government can dismiss authority leadership (Figure 3.11). Limits on the government’s ability to terminate the mandates of leadership can help protect against arbitrary or politically-motivated dismissal. Involving the legislature or judiciary can increase the transparency and accountability of dismissal proceedings.

Figure 3.11. In most countries, government can dismiss authority leadership

Answers to the question “How can the agency head/board members be dismissed from office?”

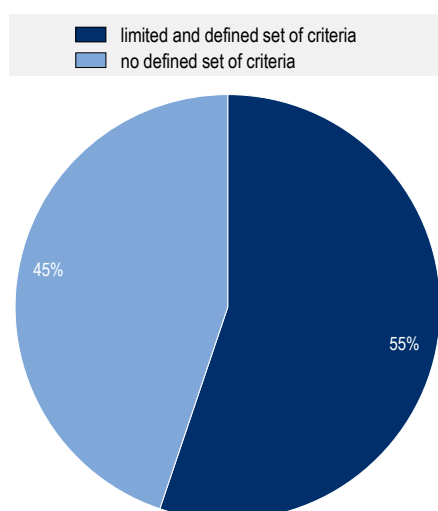


Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Leadership in many authorities can be dismissed without specific criteria (Figure 3.12). The grounds and process for terminating leadership mandates should be explicitly stated in legislation.

Figure 3.12. Leadership in many authorities can be dismissed without specific criteria

Answers to the question “What are the criteria for dismissing agency head/board members during their term of office?”



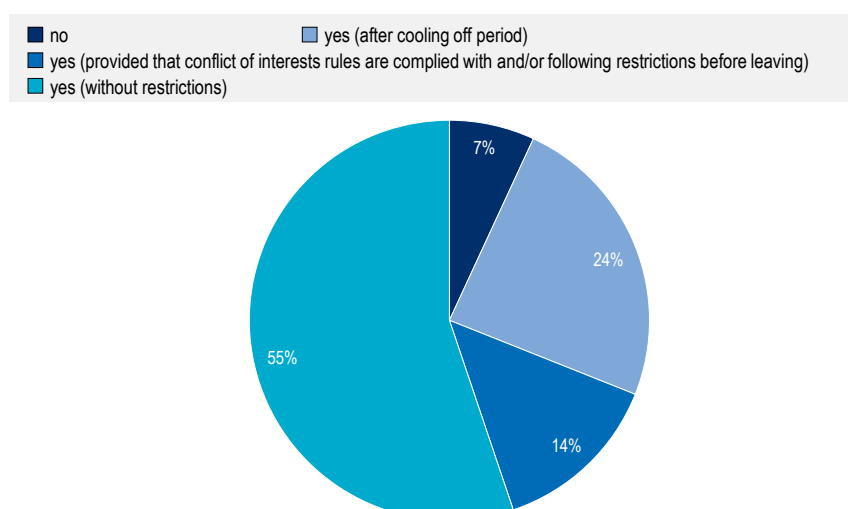
Note: Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Few authorities have a “cooling off period” after leadership mandate (Figure 3.13). Post-employment restrictions for agency leadership, including cooling-off periods, are a common way to minimise the risk of a revolving door.

Figure 3.13. Few authorities have a “cooling off period” after leadership mandate

Answers to the question “Can the agency head/board members accept jobs in the government related to the sector that is regulated by the regulator and/or the sector that is regulated by the regulator after their term of office?”



Note: Annex B contains the indicator values for participating CAAs.

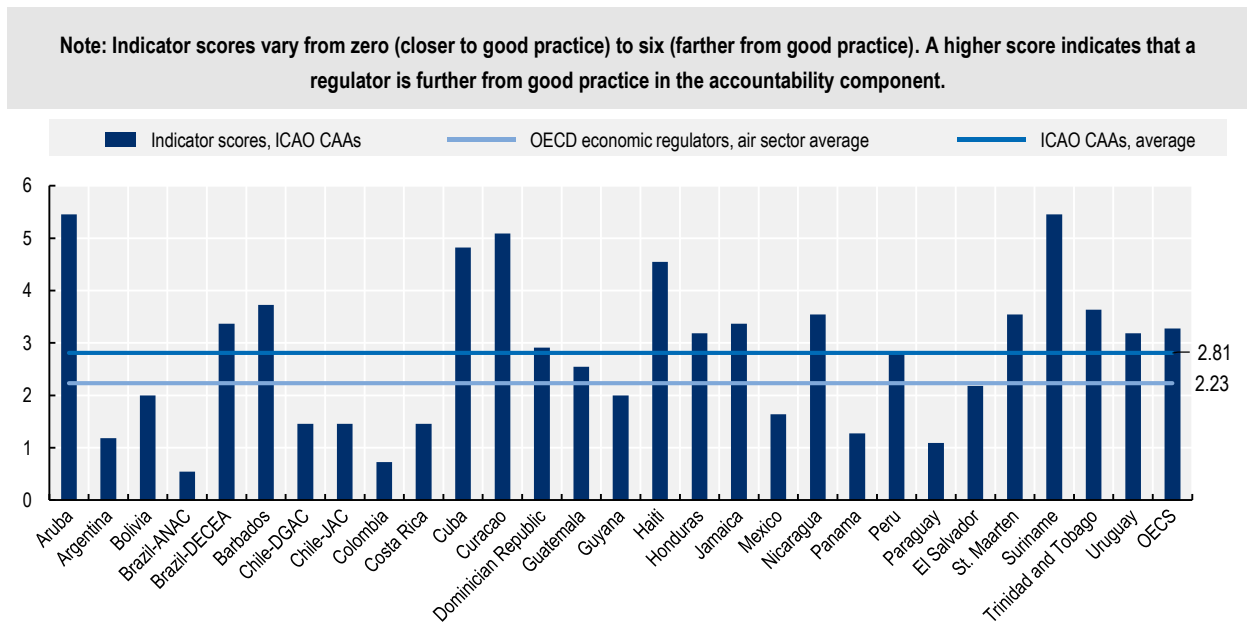
Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Governance component on accountability

Well-designed arrangements to promote accountability provide information and opportunities for appropriate input from stakeholders (OECD, 2014^[1]; OECD, 2016^[7]). Measures to enhance the transparency of a regulator’s actions also serve to collect important input for regulatory actions. Measures to safeguard independence and allow for regulatory discretion need to be balanced with measures that facilitate appropriate oversight from the executive, legislature, judiciary, regulated entities and the public, in order to hold regulators to account. For this reason, accountability can be seen as the other side of the coin of independence. This section summarises how the sample reflects key accountability arrangements.

Indicator scores suggest that accountability is an area for attention (Figure 3.14). Civil aviation authorities tend to be further from good practice in this area (2.81 average) compared to OECD economic regulators (2.23 average).

Figure 3.14. Indicator scores suggest that accountability is an area for attention

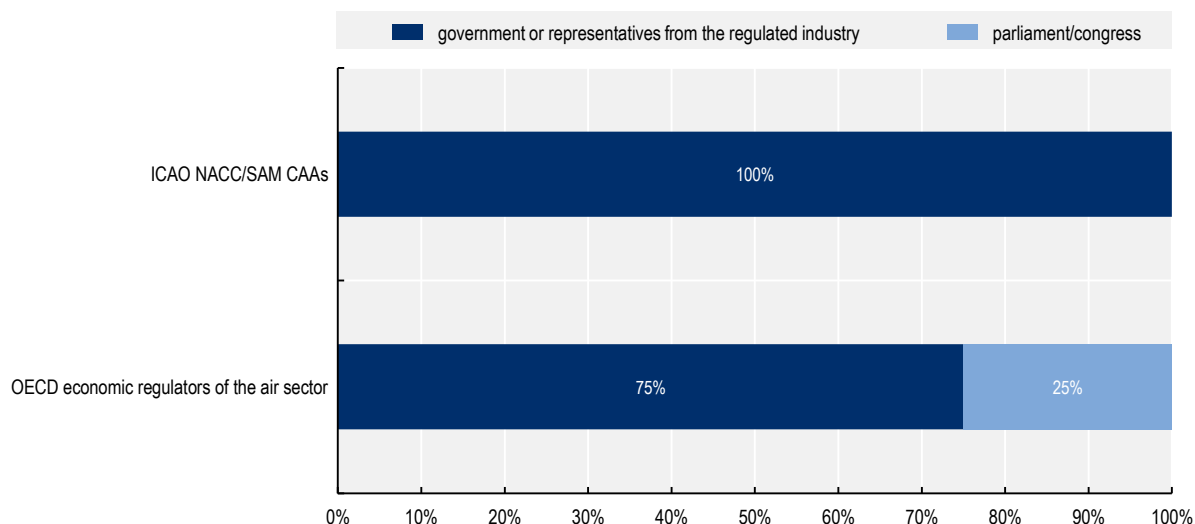


Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

All civil aviation authorities are directly accountable to government, in contrast to OECD economic regulators of the air sector (Figure 3.15). Defining formal arrangements for accountability is one of the key elements in a more accountable governance framework.

Figure 3.15. All CAAs are directly accountable to government, in contrast to OECD economic regulators of the air sector

Answers to the question “To whom is the regulator directly accountable by law or statute?”, OECD and ICAO CAA sample



Note: The questionnaire response options for this question are “government or representatives from the regulated industry” and “parliament/congress.” “Government” refers to the executive branch.

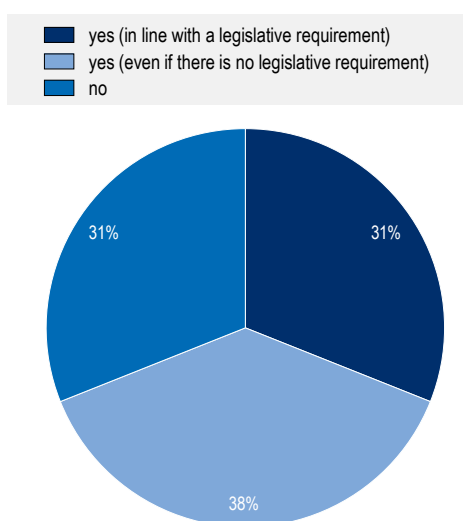
Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Many authorities do not publish draft decisions for comment (Figure 3.16). Stakeholder engagement is an important component of accountability and transparency, and helps regulators collect input for high-quality decision making.

Figure 3.16. 2/3 CAAs publish draft decisions for comment

Answers to the question “Does the regulator publish draft decisions and collect feedback from stakeholders?”



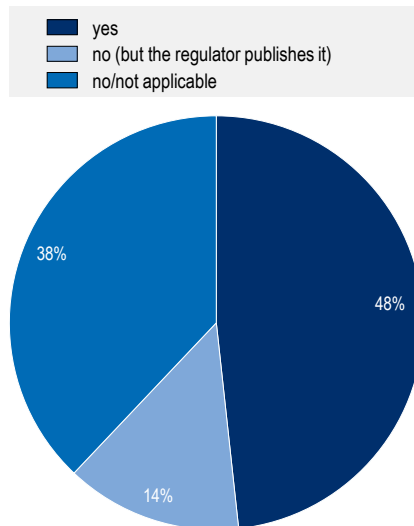
Note: Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

More than a third of regulators do not publish a performance report (Figure 3.17). Measuring sector performance helps regulators identify issues and understand the impact of regulation. Understanding and reporting on the regulator’s performance is just as important to demonstrate the effectiveness of the regulator and drive improvements.

Figure 3.17. More than a third of regulators do not publish a performance report

Answers to the question “Is there a legislative requirement for the regulator to publish a report on its activities?”

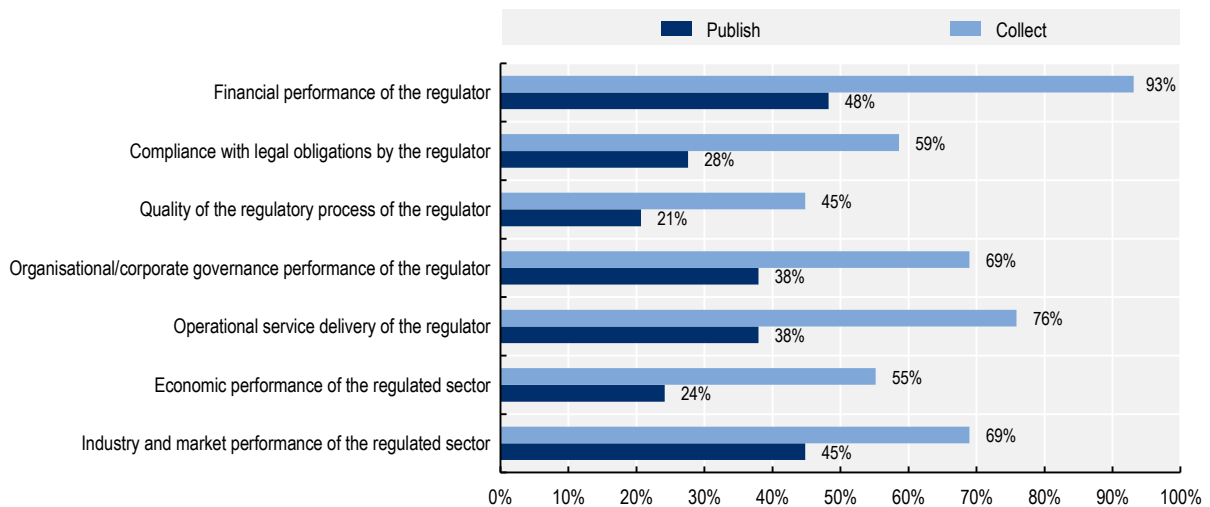


Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

More authorities should report on how well their organisations and processes work (Figure 3.18). Performance measures both of the sector and of the regulator are critical inputs to decision-making. Data on the effectiveness of the regulator can drive improvements and enable external scrutiny.

Figure 3.18. Many authorities do not report on how well their organisations and processes work

What categories of performance information does the regulator (1) collect and (2) publish?

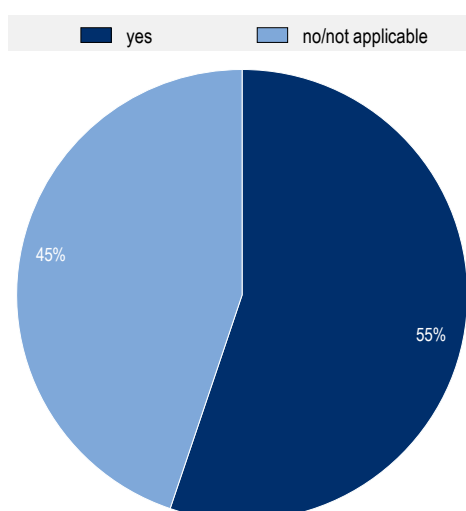


Note: Annex B contains the indicator values for participating CAAs.
 Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

More than half of authorities present a performance report to the legislature (Figure 3.19). Presenting to the legislature can be a good way to show the value-added of the authority.

Figure 3.19. More than half of authorities present a performance report to Parliament

Answers to the question “Does the regulator present a report on its activities to parliamentary/congressional committees?”



Note: Annex B contains the indicator values for participating CAAs.

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

4 Takeaways

The data show some of the distinctive features of the sample, as well as opportunities for strengthening practices or arrangements to help participating civil aviation authorities reap the benefits of appropriate independence and accountability. This section summarises key takeaways from the data. The appropriateness and applicability of specific governance arrangements can vary greatly among jurisdictions depending on a range of contextual factors that would need to be examined in depth for the development of tailored recommendations.

A diverse group of authorities

The dataset shows a group of 29 civil aviation authorities with varied characteristics and functions. The authorities operate within 26 countries or territories as well as one region across North America, Central America, the Caribbean and South America. Functions vary among authorities, with greater variation in the scope of action component than OECD economic regulators of the air sector. Despite this high variability, authorities often share common functions: 1) issuing and revoking licenses and/or denying or revoking authorisations, 2) issuing industry standards, 3) enforcing compliance with industry and consumer standards and regulatory commitments, and 4) issuing sanctions and penalties.

Re-examining *de jure* independence

Certain *de jure* provisions could help strengthen the independence of the authorities. Bolstering financial and decision making independence can help maintain confidence in the objectivity and impartiality of decisions. Certain aspects of *de jure* independence may be more relevant in specific circumstances, for example, when the government is a shareholder in one or more regulated entities.

- **Technical independence/ operational autonomy:** The majority of authorities can receive government guidance on day-to-day activities, including individual decisions and appeals. This kind of direct government involvement in the regulator's work can limit authorities' technical independence.
- **Financial autonomy:** Many authorities do not have control over their own expenditure. In nearly two-thirds of authorities, a governmental or ministerial body makes decisions over authorities' expenditures instead of the authority itself within appropriate rules.

Bolstering measures for leadership

There is room to improve arrangements affecting leadership to reduce political influence and conflicts of interest.

- **Selection and appointment:** Leadership is usually selected and appointed by government alone with few “checks.” The use of an independent selection panel (composed of members outside government) during the nomination phase is rare, and the legislature is rarely involved in final appointments.
- **Termination of mandate:** Many authorities lack safeguards to prevent arbitrary dismissal. Dismissal of leadership can generally be done by government actors alone, and in nearly half of countries legislation does not establish specific criteria for dismissing authority leadership.
- **Post-employment restrictions:** Few authorities have a cooling-off period for leadership after the end of their mandates, to minimise the risk of a revolving door. Leadership in more than half of authorities are not bound by any post-employment restrictions.

Strengthening accountability relationships

Accountability to other public bodies, stakeholders and the general public is a critical ingredient for a robust regulatory policy. The data show some unique features and opportunities for institutional strengthening in this area

- **Direct accountability:** All civil aviation authorities are directly accountable to government, in contrast to OECD economic regulators of the air sector (one-quarter of which are directly accountable to the legislative branch).
- **Stakeholder consultation:** Consultation with stakeholders and the public is an area for attention, with around 1/3 of authorities not publishing their draft decisions for comment from stakeholders and the public.
- **Responding to comments:** Of those authorities that do publish decisions for comments, around some do not respond to the comments they receive. It is considered good practice to transparently provide feedback to stakeholders on submitted comments.

Advancing performance assessment and reporting

A broader set of performance indicators and a greater emphasis on publishing performance information can help more authorities capture the benefits of performance reporting.

- **Publishing a performance report:** More than one-third of authorities do not publish a performance report, missing an important opportunity to demonstrate the effectiveness of the authority and drive improvements.
- **Types of performance information included:** Many authorities do not collect or publish certain types of performance information. In particular, more regulators should report on how well their organisations and processes work, collecting and publishing information on the quality of the authority’s processes, their compliance with legal obligations, and their organisational governance.
- **Presenting performance information to the legislature:** Many authorities do not present a performance report to the legislature, missing an opportunity to demonstrate the value-added of the authority to a broader audience through an important stakeholder.

Note

¹ Changes in methodology limit comparisons between the two vintages. Changes to the questionnaire forming the basis of the indicators focus primarily on the independence component and also include refinements for the accountability and scope of action components to reflect issues emerged through the work on independence and accountability and the work of the NER on the performance of regulators (OECD, 2016^[5]; OECD, 2016^[7]; OECD, 2017^[4]). Changes seek to capture both formal and practical aspects of the governance of regulators by more systematically measuring not only what regulators are required to do but also how they translate these requirements into practice. In addition, the sector coverage of the indicators was refined to focus on the following network sectors: energy (previously electricity and gas), e-communications (previously telecom), rail transport, air transport (previously airports only), and water (new).

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Annex A. List of participating authorities

Table A A.1. List of participating authorities

Country or region	Regulator name
Argentina	Administración Nacional de Aviación Civil (ANAC)
Aruba	Department of Civil Aviation
Barbados	Civil Aviation Department
Bolivia	Dirección General de Aeronáutica Civil (DGAC)
Brazil	Agencia Nacional de Aviación Civil (ANAC)
Brazil	Departamento de Controle do Espaço Aéreo (DECEA)
Chile	Junta de Aeronáutica Civil (JAC)
Chile	Dirección General de Aeronáutica Civil (DGAC)
Colombia	Unidad Administrativa Especial de Aeronáutica Civil (UAEAC)
Costa Rica	Dirección General de Aviación Civil
Cuba	Instituto de Aeronáutica Civil de Cuba (IACC)
Curaçao	Curaçao Civil Aviation Authority
Dominican Republic	Instituto Dominicano de Aviación Civil (IDAC)
Organisation of Eastern Caribbean States (Antigua & Barbuda, Dominica, Grenada, St. Lucia, St. Kitts & Nevis and St. Vincent & the Grenadines)	Eastern Caribbean Civil Aviation Authority (ECCAA)
El Salvador	Autoridad de Aviación Civil (AAC)
Guatemala	Dirección General de Aeronáutica Civil
Guyana	Civil Aviation Authority
Haiti	Office National de l'Aviation Civile (OFNAC)
Honduras	Agencia Hondureña de Aviación Civil (AHAC)
Jamaica	Jamaica Civil Aviation Authority (JCAA)
Mexico	Agencia Federal de Aviación Civil (AFAC)
Nicaragua	Instituto Nicaragüense de Aviación Civil (INAC)
Panama	Autoridad de Aeronautica Civil (AAC)
Paraguay	Dirección Nacional de Aeronáutica Civil (DINAC)
Peru	Dirección General de Aeronáutica Civil (DGAC)
St. Maarten	Department Head Civil Aviation, Shipping and Maritime
Suriname	Ministry of Transport, Communication and Tourism
Trinidad and Tobago	Trinidad and Tobago Civil Aviation Authority (TTCAA)
Uruguay	Dirección Nacional de Aviación Civil e Infraestructura Aeronáutica (DINACIA)

Annex B. Indicator values for participating CAAs

Table A B.1. Indicator values for participating CAAs

Note: Indicator scores vary from zero to six. A **lower** score represents a greater uptake of good-practice governance arrangements in the independence and accountability components. A **higher** score shows a lower uptake. For the scope of action component, a higher score means a more narrow scope of action.

Country	Average	Independence	Accountability	Scope of action
Aruba	4.14	3.14	5.45	3.81
Argentina	1.64	2.82	1.18	0.92
Bolivia	2.36	2.08	2.00	3.00
Brazil-ANAC	0.97	1.46	0.55	0.92
Brazil-DECEA	2.75	2.12	3.36	2.77
Barbados	3.14	2.59	3.73	3.12
Chile-DGAC	2.64	2.32	1.45	4.15
Chile-JAC	2.90	2.63	1.45	4.62
Colombia	1.36	2.20	0.73	1.15
Costa Rica	2.02	2.53	1.45	2.08
Cuba	4.29	4.12	4.82	3.92
Curacao	3.70	2.31	5.09	3.69
Dominican Republic	2.32	1.76	2.91	2.31
Guatemala	2.56	2.63	2.55	2.50
Guyana	2.53	2.37	2.00	3.23
Haiti	2.55	2.42	4.55	0.69
Honduras	2.79	1.97	3.18	3.23
Jamaica	2.40	2.33	3.36	1.50
Mexico	2.31	3.10	1.64	2.19
Nicaragua	2.62	2.01	3.55	2.31
Panama	1.68	2.37	1.27	1.38
Peru	3.12	3.31	2.82	3.23
Paraguay	1.94	3.11	1.09	1.62
El Salvador	2.01	1.99	2.18	1.85
St. Maarten	3.70	3.16	3.55	4.38
Suriname	4.63	3.00	5.45	5.42
Trinidad and Tobago	2.98	2.53	3.64	2.77
Uruguay	3.33	3.11	3.18	3.69
OECS	2.99	2.81	3.27	2.88

Note: The full database can be found at <https://www.oecd.org/gov/regulatory-policy/governance-indicators.htm>

Source: OECD Indicators on the Governance of Sector Regulators, 2021 Civil Aviation Authorities Project.

Annex C. Questionnaire schemata

Figure A C.1. Questionnaire schemata

Table 1. Independence				Coding of answers		
	Topic weight	Question weight	Subquestion weight			
	a _i	b _i	c _i			
Relationship with the executive						
Are the objectives and functions of the regulator defined?	1/3			yes (in legislation) 0	yes (in policy document, non-binding instrument) 3	no 6
The regulator can receive guidance from the government regarding:		1/4		no 6		yes 0
Long-term strategy			1/4			0
Work programme			1/4			0
Individual cases/decisions			1/4			0
Appeals			1/4			0
Does the regulator make recommendations or issue opinions on draft legislation or policy documents proposed by the executive? Please provide example.		1/4		yes (through a formal process & opinion made public) 0	yes (through a formal or informal process but opinion not made public) 3	no 6
Which body, other than a court, can overturn the decisions of the regulator?		1/4		none 0	specialized body 3	governmental/ministerial body with qualifications 4,5 6
Are the instances where decisions of the regulator can be overturned by a body other than a court clearly defined?		1/4		only court can overturn decisions 0	defined in legislation 2	defined in policy document made public 4 not defined 6
Staff						
How is the majority of the staff recruited?	1/3			positions are advertised publicly & candidates examined by selection panel 0	direct call/appointment without advertising positions 3	secondment from private sector and/or from government bodies 6
What is the process for selecting the agency head/board members?		1/12		position is publicly advertised & candidates examined by independent selection panel 0	ministerial/governmental nomination based on public job ads & independent selection panel 3	ministerial/governmental nomination without independent selection panel 6
Which body has the legal authority to make the final appointment of the agency head/board members?		1/12		parliament/congress/parliamentary/congressional committee 0	government/ministerial body with binding opinion of parliament/congress/parliamentary/congressional committee 2	two or more governmental/ministerial bodies 4 one governmental/ministerial body 6
Are there restrictions regarding the employment history of the agency head/board members?		1/12		yes 0		no 6
Does the legislation define the skills required by the agency head/board members?		1/12		yes 0		no 6

May the agency/head/board members hold other offices/appointments in the government/the regulated industry?	1/12		no 0	yes (with the consent of the board) 3	yes (with restrictions, for regulators with a agency head) 3	yes (without restrictions) 6	
If the regulator is led by a board, are appointments of board members staggered?	1/12		yes 0		no 6	n/a 0	
How can the agency/head/board members be dismissed from office?	1/12		through court procedure 0	through parliamentary/congressional decisions 3		through government decisions 6	no dismissal 3
What are the criteria for dismissing agency head/board members during their term of office?	1/12		limited and defined set of criteria 0			no defined set of criteria 6	
Are the criteria for dismissing agency head/board members during their term of office published?	1/12		yes 0		no 6	n/a 6	
Can the agency/head/board members accept jobs in the government related to the sector that is regulated by the regulator and/or the sector that is regulated by the regulator after their term of office?	1/12		yes (after cooling off period) 0	yes (provided that conflict of interests rules are complied with and/or following restrictions before leaving) 2	no 4	yes (without restrictions) 6	
How long is the term of office of the agency head/board members?	1/12		5 years or more renewable for a set number of terms or non-renewable 0	less than 5 years renewable for a set number of terms or non-renewable 2	5 years or more and renewable without restrictions 4	less than 5 years and renewable without restrictions or life appointment 6	
Budget							
Is the source of the financial budget of the regulator stated in the establishing legislation?	1/3		yes 0			no 6	
What is the length of budget appropriations?	1/6		at least three years 0	two years 3	annual 6		
If the regulator is financed in total or in part through fees paid by the regulated sector, who sets the level of the fees?	1/6		regulator within criteria set in legislation 0	parliament/congress/committee upon proposal of the regulator 2	governmental/ministerial body upon proposal of the regulator 4	governmental/ministerial body 6	n/a 0
If the regulator is financed in total or in part through the national budget, who is responsible for proposing and discussing the regulator's budget?	1/6		the regulator with no or limited interventions from other governmental/ministerial bodies 0	the regulator and another governmental/ministerial body 3	a governmental body other than the regulator 6	n/a 0	
Does the regulator provide information to the legislature or the relevant budget authority on the costs and resources needed to fulfil its mandate prior to the next budget cycle?	1/6		yes 0		no 6		
Which body is responsible for deciding the regulator's allocation of expenditures?	1/6		regulator within general financial management rules 0			governmental/ministerial body 6	

Table 2. Accountability

	Question weight	Subquestion weight	Coding of answers			
	a _i	b _j				
To whom is the regulator directly accountable by law or statute?	1/11			government or representatives from the regulated industry		
Does the regulator need to motivate its regulatory decisions (e.g. with evidence and data)?	1/11		yes (all decisions)	yes (but not all decisions)	no	
Does the regulator need to submit proposals for new regulation that it is empowered to issue to other bodies for approval?	1/11		0	3	6	
Does the regulator publish draft decisions and collect feedback from stakeholders?	1/11		to the parliament/congress	to the government	no	n/a
Does the regulator provide feedback on comments received by stakeholders?	1/11		3	6	0	0
Is there a legislative requirement for the regulator to produce a report on its activities on a regular basis?	1/11		yes (in line with a legislative requirement)	yes (even if there is no legislative requirement)	no	
Is there a legislative requirement for the regulator to produce a report on its activities?	1/11		0	3	6	
Is there a legislative requirement for the regulator to answer requests from or attend hearings organized by parliamentary/congressional committees?	1/11		yes (in line with a legislative requirement)	yes (even if there is no legislative requirement)	no	n/a
Does the regulator present a report on its activities to one or more parliamentary/congressional committees?	1/11		0	3	6	6
Does the regulator collect information on industry and market performance of the regulated sector?			yes	no (but the regulator produces it)	no/not applicable	
If such performance information is collected, is it made available on the regulator's website?			0	3	6	
Does the regulator collect information on economic Performance of the regulated sector?			yes	no (but the regulator publishes it)	no/not applicable	
If such performance information is collected, is it made available on the regulator's website?			0	3	6	
Does the regulator collect information on operational/service delivery of the regulator?			yes		no/not applicable	
If such performance information is collected, is it made available on the regulator's website?			0		6	
		1/7	yes	yes	no/not applicable	
			yes	no	not applicable	
			0	3	6	
		1/7	yes	yes	no/not applicable	
			yes	no	not applicable	
			0	3	6	
			yes	yes	no/not applicable	
			yes	no	not applicable	

Does the regulator collect information on organizational / corporate governance performance of the regulator? If such performance information is collected, is it made available on the regulator's website?	1/11		yes	yes	no/not applicable
			yes	no	not applicable
		1/7	0	3	6
Does the regulator collect information on quality of regulatory process of the regulator? If such performance information is collected, is it made available on the regulator's website?			yes	yes	no/not applicable
			yes	no	not applicable
		1/7	0	3	6
Does the regulator collect information on compliance with legal obligations of the regulator? If such performance information is collected, is it made available on the regulator's website?			yes	yes	no/not applicable
			yes	no	not applicable
		1/7	0	3	6
Does the regulator collect information on financial performance of the regulator, including costs of operating the regulator? If such performance information is collected, is it made available on the regulator's website?			yes	yes	no/not applicable
			yes	no	not applicable
		1/7	0	3	6
Are the following legislative requirements in place to enhance the transparency of the regulator's activities (with confidential and commercially sensitive information appropriately removed if needed)? - Publication of all decisions, resolutions and agreements Is the publication also online on regulator's own website?			yes	yes	no/not applicable
			yes	no	not applicable
		1/3	0	3	6
Are the following legislative requirements in place to enhance the transparency of the regulator's activities (with confidential and commercially sensitive information appropriately removed if needed)? - Public consultation on relevant activities Is the publication also online on regulator's own website?	1/11		yes	yes	no/not applicable
			yes	no	not applicable
		1/3	0	3	6
Are the following legislative requirements in place to enhance the transparency of the regulator's activities (with confidential and commercially sensitive information appropriately removed if needed)? - Publication of a forward-looking action plan Is the publication also online on regulator's own website?			yes	yes	no/not applicable
			yes	no	not applicable
		1/3	0	3	6

Table 3. Scope of action							
	Question weight	Coding of answers					
	a _i						
What is the status of the regulator?	1/13	independent body with adjudicatory, rule-making or enforcement powers	0	independent body with purely advisory role	3	ministerial department/ agency	6
Can the regulator collect information from the regulated entities by compulsory process?	1/13	yes (with sanctioning power for non-compliance)	0	yes (without sanctioning power for non-compliance)	3	no	6
Does the regulator issue and revoke licenses?	1/13	yes (independently)	0	as the government or other bodies	3	no/not applicable	6
Does the regulator regulate prices on monopolistic activities?	1/13	yes (independently)	0	yes (with other agencies/bodies such as the government or other bodies)	3	no	6
Does the regulator conduct research (e.g. about costs) as an input for price setting?	1/13	yes (independently)	0	yes (with other agencies/bodies such as the government or other bodies)	3	no	6
Does the regulator provide binding guidance, review and/or approve contract terms between regulated entities and/or market actors?	1/13		0		3		6
Does the regulator issue industry standards?		yes (independently)	yes (independently)	yes (with other agencies/bodies such as the government or other bodies)	yes (with other agencies/bodies such as the government or other bodies)	no	
Are these standards published on the regulator's website?		yes	no	yes	no	not applicable	

Does the regulator issue consumer standards?		yes (independently) / not applicable	yes (independently) / not applicable	yes (with other agencies/bodies such as the government or other bodies)	yes (with other agencies/bodies such as the government or other bodies)	no
Are these standards published on the regulator's website?	1/13	yes 0	no 3	yes 1.5	no 4.5	not applicable 6
Does the regulator issue guidelines and/or codes of conduct?		yes (independently) / not applicable	yes (independently) / not applicable	yes (with other agencies/bodies such as the government or other bodies)	yes (with other agencies/bodies such as the government or other bodies)	no
Are these standards published on the regulator's website?	1/13	yes 0	no 3	yes 1.5	no 4.5	not applicable 6
Does the regulator enforce compliance with industry and consumer standards and regulatory commitments through legal punitive powers for non-compliance (e.g. inspections and fines)?	1/13	yes (independently) 0		yes (with other agencies/bodies such as the government or other bodies) 3		no 6
Does the regulator mediate to resolve disputes between market actors and regulated entities?	1/13	yes, independently 0		yes (with other agencies/bodies such as the government or other bodies) 3		no 6
Does the regulator have the power to take final decisions in disputes between market actors?	1/13	yes (independently) 0		yes (with other agencies/bodies such as the government or other bodies) 3		no 6
Can the regulator issue sanctions and penalties (e.g. financial)?	1/13	done independently by agency or by court or by agency together with court 0		yes (together with other agencies/bodies such as the government) 3		no 6