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Mexico and North America: the risks of the constitutional reforms of 2024

- **The constitutional reform to the judicial system has implications for the professionalization of its members, the country's institutionality and the separation of powers. Its approval has raised concerns among Mexico's North American partners regarding legal certainty and the rule of law.**
- **The proposal to extinguish seven autonomous agencies could conflict with several chapters of the USMCA regarding Telecommunications, Competition Policy and State-Owned Enterprises.**
- **Reforming the constitution on energy, water and agricultural biotechnology has implications for Mexico's relationship with its North American partners.**

On September 15, the Federal Official Gazette (DOF) published the constitutional reform to the Federal Judiciary which, among other changes, includes the disappearance of the Federal Judiciary Council (CJF) and the election by popular vote of ministers, magistrates and judges who are responsible for the administration of justice in the country. ^{1,2}

Additionally, **other proposed constitutional reforms** that have not yet been discussed, approved or ratified -such as the one related to the disappearance of autonomous agencies- **also represent risks in this regard.**

For this reason, the Mexican Institute for Competitiveness (IMCO) highlights the **negative implications for Mexico's competitiveness, as well as for the stability of its trade relations, particularly with its partners in the United States-Mexico-Canada Agreement (USMCA).**

Judicial reform: less independence and professionalization

The changes derived from the new reform put the independence of the Judicial Branch at risk, since **the popular election of positions implies the partisanization of processes previously governed by technical and objective criteria**; the possible intervention of political parties and other interest groups in the profiles of the people in charge of imparting justice has serious consequences for the level of impunity in Mexico. Furthermore, the changes in the requirements to become a judge, minister or magistrate create a setback in the professionalization of the Judiciary. ³

¹ Official Gazette of the Federation. "[Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de reforma del Poder Judicial.](#)" (September 25, 2024).

² The Council of the Federal Judiciary will be replaced by two bodies: the Court of Judicial Discipline and a judicial administration body. The positions to be elected by popular vote are the ministers of the Supreme Court of Justice of the Nation, the magistrates of the Superior Chamber and the regional chambers of the Electoral Tribunal of the Federal Judiciary, the magistrates of the Judicial Disciplinary Tribunal, the magistrates of the Circuit Magistrates and the District Judges.

³ Mexican Institute for Competitiveness (IMCO). "[Ocho iniciativas que ponen en riesgo la competitividad de México.](#)" (February 6, 2024).

The reform, which was not based on a rigorous diagnosis of the current problems of the justice system in Mexico,⁴ **has raised concerns from countries such as the United States and Canada**, which have pointed out risks to the bond of trust between investors and the Mexican Government,⁵ as well as to the institutionality, separation of powers and rule of law in the country.⁶

The new structure of the Judiciary could conflict with the essence of the USMCA, which, although it does not include specific rules about the structure of the judicial system, does require it to be impartial and independent. In various chapters of the agreement, Mexico, the United States and Canada commit to:

- Providing fair and equitable treatment to investors in criminal, civil, or administrative judicial proceedings, in accordance with the principle of due process included in the principal legal systems of the world (Chapter 14: Investment).⁷
- Guaranteeing access to judicial, quasi-judicial and labor tribunals for the enforcement of labor laws, which must be impartial and independent. Proceedings before these tribunals must comply with due process of law and be fair, equitable, and transparent (Chapter 23: Labor).⁸
- Establishing judicial, quasi-judicial or administrative tribunals or processes that are impartial and independent of the authorities in charge of administrative processes in the country (Chapter 29: Publication and Administration).⁹

The reform to the Judicial Branch has already been published and its implementation is in process. However, **in the discussion and modification of other proposed constitutional reforms that have not yet been approved, it is prudent to consider the potential impacts on the country's competitiveness and the stability of its trade relations.**

The disappearance of autonomous agencies: greater concentration of power and less accountability

One of these proposed reforms involves the extinction of seven autonomous agencies, including the Federal Telecommunications Institute (IFT), the Federal Economic Competition Commission (Cofece) and the Energy Regulatory Commission (CRE); the agencies would be integrated into Federal Public Administration executive departments.¹⁰ **The disappearance of the seven agencies affects the institutional architecture and generates imbalances by increasing the concentration of key decisions in the Executive Branch.**

⁴ Cyrus R. Vance Center for International Justice and Federación Latinoamericana de Magistrados. "[Diagnóstico sobre la independencia del Sistema Judicial Federal](#)". (September 2023).

⁵ El Economista. "[Inversionistas canadienses, preocupados por reforma al Poder Judicial en México: embajador Clark](#)". (August 22, 2024).

⁶ U.S. House Committee on Foreign Affairs. "[H.Res.1435 - Raising concern about the proposed constitutional reforms in Mexico](#)". (September 10, 2024).

⁷ United States-Mexico-Canada Agreement. "[Chapter 14: Investment](#)". (2020).

⁸ United States-Mexico-Canada Agreement. "[Chapter 23: Labor](#)". (2020).

⁹ United States-Mexico-Canada Agreement. "[Chapter 29: Publication and Administration](#)". (2020).

¹⁰ The other bodies proposed to be eliminated are the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI), the National Hydrocarbons Commission (CNH), the Council for the Evaluation of Social Development Policy (Coneval) and the System for Continuous Improvement of Education (Mejoredu).

In addition, the elimination of the IFT, Cofece and CRE - and their integration into the Secretariat of Infrastructure, Communication and Transportation (SICT), the Secretariat of Economy (SE) and the Secretariat of Energy (SENER), respectively - **has potential direct conflicts with certain provisions of the USMCA** in which members are obligated to:

- Ensure the existence of a telecommunications regulatory body that is independent, impartial, and not accountable to any public telecommunications service provider (Chapter 18: Telecommunications).¹¹
- Maintain a national competition authority or authorities that are responsible for the enforcement of national competition laws and provide no less favorable treatment to persons of any USMCA member country (Chapter 21: Competition Policies).¹²
- Ensure that administrative bodies regulating SOEs (including those operating in the energy sector) exercise their regulatory duties in an impartial manner (Chapter 22: State-Owned Enterprises).¹³

Regardless of the conflicts with the USMCA, **the elimination of autonomous agencies with regulatory and evaluation responsibilities would have negative implications for transparency, accountability and checks and balances to public powers in Mexico**, crucial elements for the country's competitiveness and legal certainty.¹⁴

Additional risks: energy, water, and agricultural biotechnology reforms

Other proposals that will be presented to the new legislature that took office in September of this year could conflict with the provisions of the USMCA.

On the one hand, the reform proposal regarding strategic industries of the State -which **proposes to limit the capacity of the Federal Electricity Commission (CFE) to enter into contracts with private companies in electricity transmission and distribution and to establish the precedence of the CFE (a State-owned company) over private companies**- generates conflicts with provisions that:

- State that if a country opens its economy further by allowing more trade, investment or foreign participation, it may not roll back such measures in the future or close sectors previously open to private participation (Chapter 14: Investment).¹⁵
- Prohibit preferential treatment by requiring that no less favorable treatment be given to investments from the USMCA countries than to domestic investments (Chapter 14: Investment).
- Require that non-discriminatory treatment be granted to companies from USMCA member countries with respect to state-owned companies from those countries (Chapter 22: State-Owned Enterprises).¹⁶

Similarly, **the initiatives that seek to reform the constitution regarding water availability and concessions for mining activities also clash with provisions of USMCA's Chapter 14 regarding preferential treatment for public companies and the opening of economic**

¹¹ United States-Mexico-Canada Agreement. "[Chapter 18: Telecommunications](#)". (2020).

¹² United States-Mexico-Canada Agreement. "[Chapter 21: Competition Policies](#)". (2020).

¹³ United States-Mexico-Canada Agreement. "[Chapter 22: State-Owned Enterprises](#)". (2020).

¹⁴ IMCO. "[Ocho iniciativas que ponen en riesgo la competitividad de México](#)". (February 6, 2024).

¹⁵ United States-Mexico-Canada Agreement. "[Chapter 14: Investment](#)". (2020).

¹⁶ United States-Mexico-Canada Agreement. "[Chapter 22: State-Owned Enterprises](#)". (2020).

sectors. The former seeks to curb concessions to private parties in areas with low water availability and only authorize allocations to public entities for personal and domestic consumption; the latter would prohibit the granting of concessions for mineral exploration and exploitation in open-pit mining, effectively blocking participation in the sector.

Finally, **the proposal to ban the use of genetically modified corn, including transgenic corn, for planting and human consumption imposes restrictions on trade without presenting scientific evidence to support the measure.** Mexico is already in a dispute settlement process on the issue under the rules of the USMCA,¹⁷ as it conflicts with provisions that:

- Establish that arbitrary restrictions on trade in a good cannot be implemented (Chapter 2: National Treatment and Market Access for Goods).¹⁸
- State that sanitary and phytosanitary measures, such as restrictions on imports of agricultural goods, must be based on scientific recommendations (Chapter 9: Sanitary and Phytosanitary Measures).¹⁹

The approval and implementation of constitutional reforms that not only affect the country's competitiveness and institutional framework, but also generate uncertainty could lead to a volatile environment and could compromise the confidence that Mexico's trading partners have in the country.

Currently, 83% of Mexico's exports go to the United States and 3% to Canada,²⁰ while 44% of the total FDI received by Mexico in the first half of 2024 came from the United States and 8% from Canada.²¹

Any constitutional reform must take into account its effect on the system of checks and balances, transparency, accountability and competitiveness, as well as the potential impact on the relationship with the United States and Canada.²² The loss of institutional trust and legal certainty could destabilize foreign investment and foreign trade, thus increasing the risks to the Mexican economy.

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¹⁷ IMCO. "[Estados Unidos solicita panel de solución de controversias por medidas de biotecnología agrícola en México](#)" (August 17, 2023).

¹⁸ United States-Mexico-Canada Agreement. "[Chapter 2: National Treatment and Market Access](#)". (2020).

¹⁹ Treaty between Mexico, United States and Canada. "[Chapter 9: Sanitary and Phytosanitary Measures](#)". (2020).

²⁰ Bank of Mexico. "[Balanza Comercial de Mercancías de México](#)". (January to July 2024).

²¹ Ministry of Economy. "[Inversión Extranjera Directa](#)". (First half of 2024).

²² IMCO. "[Estados Unidos solicita panel de solución de controversias por medidas de biotecnología agrícola en México](#)". (July 1, 2024).