



Regulation radar



Introduction:

People and companies are increasingly aware of the impact and implications regulations hold on their sustainability, development and achievement of their goals. In most cases, regulatory changes, or modifications to the rules of the game in an industry, are considered strategic risks, aggravated by the fact that there is little chance of companies having an impact on the development of such changes. Very often, the ability to impact the regulatory dynamics has been approached from the point of view of lobbying activities which, historically, has been associated with the search for some individual benefit while ignoring the general needs of an industry or a community.

To SURA, organizations must develop their ability to participate in and have an impact on regulatory dynamics. However, we are convinced that this exercise must be carried out with a clear view to the sustainable development of the industry and society, and attempting to produce changes that lead to improved public policies that go beyond obtaining individual benefits.

Achieving this ability to impact, participate, and make proposals aimed at the sustainable development of the regulatory framework is, basically, the purpose of managing regulations and regulatory trends.

This document proposes an overview of what is happening in the Latin American regulatory context. We understand that we are facing a changing environment and many challenges.

That is why it is appropriate to look at this approach in light of each industry's individual features and characteristics.

Because the regulatory environment is constantly evolving, Regulatory Trends must be constantly updated and adapted based on the constant observation not just of the regulatory environment but also the environment in each industry and, specifically, the megatrends that arise from technological development, care for the environment, and social changes. We understand that it is the consumer who, at the end of the day, is most relevant and pertinent to the evolution of the markets and, therefore, the consumer will have the biggest impact on the development of regulations.

This document deals with the Regulator's current rational analysis. It should be noted that, for the purposes of this exercise, we have defined 'regulator' in a broad sense, i.e., any authority with the formal or material ability to introduce changes in the regulatory system. Thus, our view is not limited to those entities that enact laws. It also includes judges, supervisors, and any other entity capable of modifying, interpreting, and operating the regulatory framework. Thus, we are proposing some hypotheses to explain their behavior and the assumptions we believe are currently being used to create regulations.

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Regulation radar

Overarching/Enabling trends

Virtuality
Artificial intelligence

Social Protection

- Platforming of the labor market
- Social Security
- Employees' health
- Reconfiguration, technology, and ethics in the work environment

Habitability

- Actions to mitigate climate change
- Mobility
- Security

Regulatory alternatives

- Regulatory innovation
- Self-regulation / co-regulation
- New regulators?

Population dynamics

- Changing demographics and social groupings
- Actions in favor of marginal groups and inequalities
- Bio legislation
- Rise of other fundamental rights
- New legal subjects
- Privacy

Regulatory recognition and limitations of new market interactions

- Virtual marketplace
- New means of exchange
- Fintech
- Responsibilities over technological change



Regulator's rationale

The fact that regulators are cautious, preventive and have a limited response capability, and the 2008 global financial crisis, are two theoretical assumptions that affect the regulator's behavior and, therefore, determine the rationale used to prepare rules or standards, as we shall see below

Regulators are cautious and preventive, with limited response capability:

It is clear that, historically, regulations have followed social realities. Rules and laws are not created and developed on their own but rather follow actions and realities that identify different assumptions and provide clear parameters, define the rights and obligations derived therefrom, and establish consequences of noncompliance.

This has not changed, and it should not change. The law is, basically, a follower of social trends.

However, one cannot ignore the fact that social dynamics now have other rhythms and tempos. In the past, the same social reality took a long time to change and, therefore, Regulators had time to internalize, gain in-depth knowledge of their assumptions, and provide complete regulations. Currently, many realities change even before they have been regulated, and the regulator's biggest challenge is to provide timely and efficient regulatory responses to those changes.

The 2008 global financial crisis was the result of three major crises:

The first crisis, that had to do with the global food crisis between 2007 and 2008 and which was mostly due to the low yield of several crops in Africa and Australia, together with the high demand for food from highly overpopulated countries as a result of the growth of the middle class (Brazil, India, and China), and aggravated by the high price of oil –which increased the price of shipping and of fertilizer for crops.

The second was a global stock market crisis caused by the subprime mortgage crisis that produced a sharp decline in the North American and European stock markets.

And finally, the liquidity crisis: that was a consequence of the stock market crisis and led to a generalized market contraction because capitals were placed in safer assets, many of them outside the financial system.

There seems to be clarity and a consensus as to the fact that the 2008 financial crisis was the result of the systematic deregulation and liberalization of the financial system that had been going on since the 80s and early 90s in Europe and in the United States.

Thus, the 2008 global financial crisis led to an acceleration of new rules involving more intervention, and regulations to prevent similar events, and led the way to the current paradigm (Lefebvre, 2019).

As a result, these two theoretical assumptions can be identified in the regulator's behavior:

- **Because of changes in the market and in consumer behavior, Regulators are less efficient in their interventions.**

Let's begin with the following premise: the regulatory system always follows reality. This is logical and natural. The speed of change in social behaviors, new business, consumer trends, new technologies, is greater than regulators' abilities in those situations. That is why we say that it is a trend follower. The challenge lies in providing timely responses to those changes in social interactions that require regulation, or even to anticipate the legal rules and principles for a reality that will later be included in the legal system.

- **Regulatory trends are the result of the prevailing economic, political, and social orders.**

The second assumption is self-explanatory: human behavior, the way of doing business and, therefore, the way those are regulated, depend on the prevailing global, economic, political, and social order and, thus, regulations are also response to that.



Regulators current situation

As a result of everything that has been mentioned, we now find ourselves faced with regulators that want to be more proactive, deeper, and more technical, and who apparently mistrust those market agents that have been traditionally regulated. In general, regulatory authorities (supervisors) now have ample knowledge of the activities in which they intervened and, therefore, regulated markets are finding increasing depth and, at the same time, greater dispersion.

Overall, one could say that we are facing an interventionist regulator who bases their actions, mostly, on three factors:



1**A new definition of economic values:**

the traditional concept of the value of goods and services is now complemented with other key elements of interest for markets, consumers and, obviously, the regulators themselves. The “noneconomic” value and the impact of those goods and services on society are also a highly relevant assumption for regulation. It is obvious that regulators have advanced in their definition of new regulatory frameworks by using transparency, sustainability, and governance criteria in order to protect and build confidence among the various stakeholders and actors in the market.

2**Distrust of market actors:**

the crises that took alerted regulators and made them distrust market actors. Distrust implies regulations based on processes and controls, which in a way represents significant extra costs for organizations.

3**Avoid the occurrence of systemic risk:**

one of the things that markets are most interested in is preventing contagions in which actions or events that happen to certain actors spread to the entire system. These assumptions have led to a disruption in which regulated markets become stricter but, at the same time, new actors and businesses which, in principle, are not subject to the rules and, therefore, operate in informal or deregulated markets. This creates regulatory arbitration, that is, they take advantage of regulatory gaps or incompatibilities to avoid or evade the application of unfavorable regulations. This has implications for the rules on competition that apply to various actors, and will also give rise to other assumptions that eventually will lead to new topics of regulation.

The contents of this document are the result of a structured observation of the environment, and they global regulatory environment which, after a clustering and analysis process, led to the conclusions and trends we have set forth, and reflect the major topics on which the regulator is currently focusing. That way we can anticipate and adapt to any possible changes, or promote any initiatives and opportunities derived from those topics.

Main trends identified

Social Protection

- Platforming of the labor market
- Social Security
- Employees' health
- Reconfiguration, technology, and ethics in the work environment

Habitability

- Actions to mitigate climate change
- Mobility
- Security

Population dynamics

- Changing demographics and social groupings
- Actions in favor of marginal groups and inequalities
- Bio legislation
- Rise of other fundamental rights
- New legal subjects
- Privacy

Regulatory alternatives

- Regulatory innovation
- Self-regulation / co-regulation
- New regulators?

Regulatory recognition and limitations of new market interactions

- Virtual marketplace
- New means of exchange
- Fintech
- Responsibilities over technological change

Overarching/Enabling trends

- Virtuality
- Artificial intelligence

Overarching/ Enabling trends

For several years we have been talking about virtuality and artificial intelligence as overarching phenomena that enable human interactions. In this respect, we cannot look at them separately. Rather, they must be understood as phenomena that pervade most social interactions, and become challenges that require regulatory responses, not always substantive but often based on the supervision and application of existing rules the application and interpretation of which must be expanded to cover the growth of virtuality and artificial intelligence.



Virtuality

This refers to the rights and obligations of the virtual life that pervades many areas of people's lives and even implies a blurring of the lines between real and virtual life. Virtuality is pervading a growing number of areas of our lives and environments, and many of the phenomena that were taking place in our non-virtual lives are now found in virtuality. This poses a challenge for the application of the rules to control them.

For example, intellectual property issues are a challenge because, although there are regulations to cover it, the birth of virtual creations and the massification of such creations have implications for the application and control of the respective regulations.

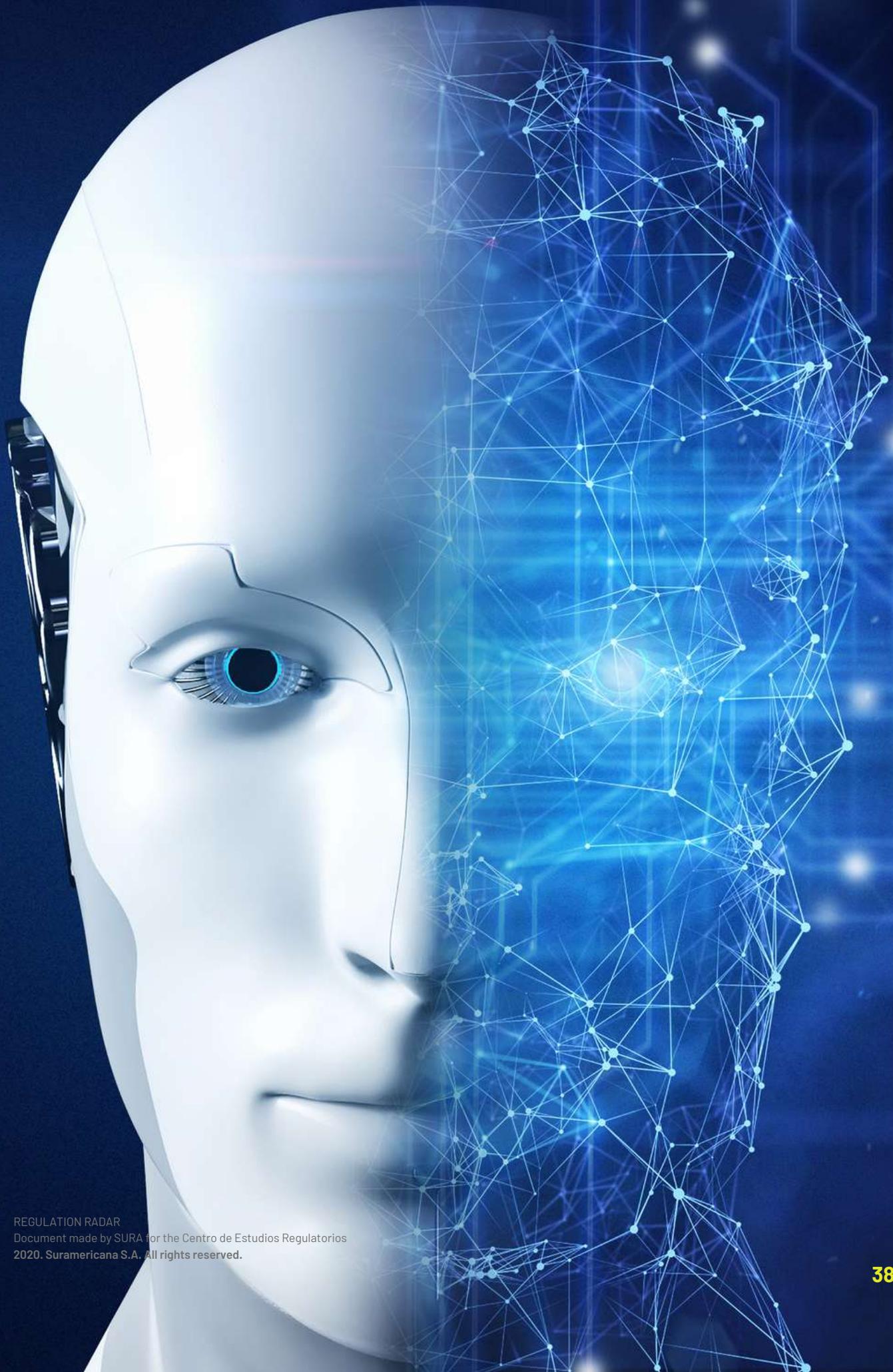
Another example of this phenomenon is the creation and domiciliation of companies, for which there are specific rules in each jurisdiction. However, those rules can be overwhelmed when we speak about virtual companies with a global reach than cannot be limited to a single territory or a specific jurisdiction.



Artificial intelligence

artificial intelligence is a technology that cuts across many spheres and has the potential to change the way we do things. There is no doubt that AI is increasingly found in different areas of life and has the potential to change our environment and the way we interact with the environment and with each other. Although artificial intelligence will necessarily need appropriate regulations specifically for this type of technology, its manifestations and applications will require the creation of regulations in different areas.

For example, the use of artificial intelligence in vehicles will require special regulation to answer for the consequences of delegating the act of driving on artificial intelligence systems. Another example could be the use of AI for selecting those who apply for a job in a company, and another example would be the use of artificial intelligence in financial markets.



Social protection

The world is facing changes in labor relations, to a great extent as a result of new technologies and, because of that, life models and labor relations are changing, and regulators have to deal with this social reality.

The new ways to regulate labor relations and the responsibilities of those who intervene in those labor relations have an impact on work and they also have implications for people's social security and future pensions. Labor laws are being rethought in light of the new business and work models, and as a response to the shortcomings of current models in terms of social security.

In light of the actual changes in labor relations and their repercussions on social security systems and especially vis-à-vis people's future pensions, regulators are trying to regulate and formalize more flexible employment models and contracts that still protect the employees, because the lack of regulatory response to these models that are coming up could make Labor Relations more precarious and have a negative impact on employees' well-being and social security.

Regulators must find a balance between the new, flexible hiring models and the guarantees of employees' basic rights they have obtained over the years, including, obviously, issues related to social security. Modern labor law faces the challenge of being in constant flux and evolution and responding to technological and economic realities that did not exist when progressive social rights were implemented.

Thus, we are facing the "disintegration of labor contracts" (Lefebvre, 2019) and the rise of new dynamics in labor relations. This could lead to more precarious and segmented working conditions. The regulator must propose new labor contract systems that respond to current work conditions but being careful not to precarize labor conditions that could have consequences not only for each employee but also for social security systems in general. Furthermore, faced with these changes, the regulators are rethinking employee's labor rights vis-a-vis new models in business, work, and social security as a result of the shortcomings of current systems.

Sub trends

- **Platforming of the labor market:**

this includes to problems that arise in labor relations established through digital platforms, i.e., discussion about labor precarization, labor relations, etc. This implies new ways to contract, and responses from the regulator and the employers.

INDICATION.

The Argentine justice system rules against distribution platforms: an Argentinian judge ordered the administration of Buenos Aires to ban digital delivery platforms, and to require the owners of those platforms to consider as employees the hundreds of people who are currently working for the platform and are not considered formal employees (Rivas Molina, 2019).

- **Social Security:**

discussions about the contributions for independent workers, reforms to the pension systems due to low coverage, questioning the current model, redistribution of the system's limited resources, dilemmas among neoliberal and welfare state models, etc. This means that regulators are starting to take positions vis-à-vis these problems to ensure the stability and sustainability of social security systems.

INDICATION:

Reforms to pension systems: several countries in the region are currently discussing different proposals for reforming their pension systems, trying to solve problems of low coverage, changes to the existing model, resource distribution, etc..



Sub trends

- **Employees' health:**

this includes problems about work limits, for example, the right to disconnect, balance between work and personal life, excessive work etc. This means that regulators should start setting up regulatory limits against any abuses by the employers that might affect employees' health.

INDICATION.

"The trial against directors of the Paris Telephone Company for employee harassment is moving forward. There could be evidence of a company policy to harass employees to reduce the number of full-time employees. This might have resulted in at least 35 suicides". (Nación, 2019)

- **Reconfiguration, technology, and ethics in the work environment:**

how technology can start performing tasks previously carried out by humans, robotics, artificial intelligence etc. Technology's incursion into the work environment has many consequences which go beyond the implementation of technology at work, such as firing or relocating all the employees that will be "replaced" by technology, continue to pay for social security for the replaced employees, etc.

INDICATION:

FedEx robot messenger: this is an autonomous, electric robot that works full shifts without a break and makes it possible to achieve some operating efficiencies by replacing the work previously carried out by a person (Álvarez, 2019).

Habitability

Changes to the environment where we live and the way we habit it, from the environment to new systems of mobility, issues that have to do with security and their implications, are changing the dynamics of the way we relate and live with the environment, and are producing regulations for new ways to interact. For example, regulations that are attempting to repair, mitigate, or stop the damages, and overcome the limitations imposed by our current environment.

Weather phenomena, the transformation of mobility and the way to express it, and issues about the security of individuals and States, are forcing regulators to be concerned about these topics because they have a direct impact on the environment where we all live. Many of these regulatory responses are the result of international efforts and initiatives, but we are also beginning to see isolated regulatory phenomena that respond to the concerns and ideologies of some individual regulators, such as regulations for the protection of the environment.

Sub trends

- **Actions to mitigate climate change:**

regulators are increasingly concerned about actions against climate change. There is a growing number of rules about renewable energy, single-use plastics, admission limits, clean energy, incentives for electric vehicles, and others, intended to protect the environment.

INDICATION.

Solar panels or moss will be mandatory for roofs in Amsterdam in an attempt to take advantage of an unused space in a green manner that helps preserve the environment (Mencantalaciencia, 2019).

- **Mobility:**

regulation of several mobility solutions, autonomous mobility, electric skateboards, shared vehicles, home delivery applications (no travel as a concept of mobility), telecommuting, smart transportation systems for cities, delivery via drones, mobility as a service, etc. (standards for liability, competition, safety, connectivity, etc.)

INDICATION:

The governor of Florida signed a bill allowing autonomous vehicles to be tested on state roads if they meet certain minimum safety requirements but allow the driver to completely relinquish control of the vehicle (Carvalho, 2019).

- **Security:**

verification of individuals identity on the web, geolocation, monitoring through

- biometric factors, identification of personal characteristics using cameras for monitoring, prohibition of firearms, etc. intended to improve security in the cities and in cyberspace (monitoring people who belong to extremist groups, for example, identifying terrorists without having to know what they look like just by using their identifying heartbeats).

INDICATION:

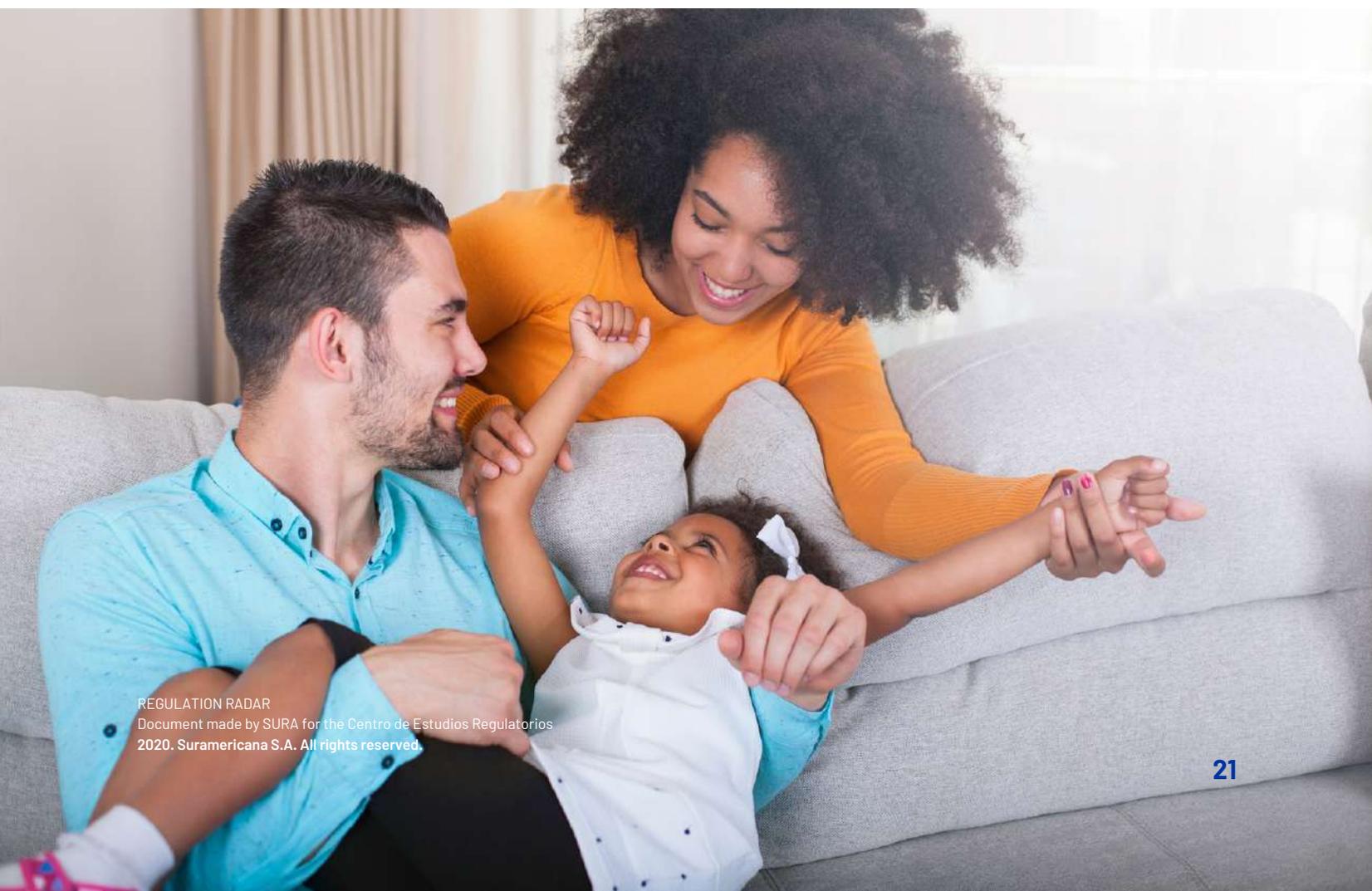
New Zealand restricts arms sales in an attempt to prevent massacres with legally purchased weapons. This measure is intended to help the country's security (Espinosa, 2019).

Population dynamics

The reduction in birth rates and the increase in people's life expectancy has changed the population pyramid resulting in an older population. As a result, social dynamics have been changing over the past several years.

There have been changes in the population exchanges, in the makeup of society, and in social relations. Regulators are using regulations to close social inequality gaps by recognizing new social dynamics and using social practices and incentives

The changes that have been taking place in population interactions and dynamics produce gaps and inequalities that can impact certain sectors of the population, regulators are intervening to close those gaps and mitigate the impact produced by new social phenomena, by establishing new rights and obligations as a response.



Sub trends

- **Changing demographics and social groupings:**

aging populations and low birth rates: regulations to promote births (a law to slow down depopulation, for example). Additionally, the concept of family has been expanded to same-sex couples, animals as part of the family, foster children, etc., and the recognition of the rights derived from that concept, such as succession and pension issues.

Señal

- Galicia is studying a law to slow depopulation by encouraging the return of immigrants, and promoting births to counteract low population density (Sanmartín, 2019).
- The Constitutional Court in Ecuador ruled in favor of marriage between same-sex individuals (España, 2019).

- **Actions in favor of marginal groups and inequalities:**

in an attempt to mitigate the impact of inequalities and marginalization, regulators are adopting affirmative actions in favor of historically marginalized groups such as LGBTI, women, ethnic minorities, etc., for example, by establishing a percentage of women participating in boards of directors.

In addition, new types of marginalization are arising in social networks, for example, Facebook tagging, and regulators are starting to limit and intervene those interactions.

The regulators are also starting to deal with emerging inequalities that affect different audiences, such as the bias in AI systems, or the difference between normal humans and “superhumans” arising from genetic modifications that look for perfection.

INDICATION

- Uruguay rules that companies must allot at least 1% of jobs to transgender individuals (Uruguay, 2019).
- The Brazilian Supreme Court defines homophobia and transphobia as crimes and they will be penalized the same as racism: 5 years in prison (Oliveira, 2019).

- **Bio legislation:**

an increasing number of regulators are taking regulatory positions with respect to the basic rules of human beings from an ethical point of view. For example, genetic modifications, issues such as abortion, euthanasia, etc., require decisions by the regulators, either to impose limits or to set common parameters to respond to the dilemmas or alternatives that arise.

INDICATION.

The first human-monkey hybrid was created in a Chinese laboratory, thus evading legal and ethical limitations in countries such as the United States and Spain for performing this type of procedure (Fan, 2019).

- **Rise of other fundamental rights:**

people are beginning to discuss whether the air, Wi-Fi, euthanasia, and others, should be considered fundamental rights, thus showing a clear trend by the regulators towards expanding the list of fundamental rights and/or the evolution of existing rights.

INDICATION.

In Colombia, a bill was submitted to Congress to consider air as a fundamental right (Nieto Álvarez, 2019).

- **New legal subjects:**

recognizing rivers, animals, and others, as subjects with rights.

INDICATION.

The Cauca River is declared a subject with rights, and the national government was ordered to act as the steward and legal representative for the river's rights (Semana Sostenible, 2019).

- **Privacy:**

regulation and protection of personal data, right to privacy, etc.: defining the limits and conditions to manage these rights, and the sanctions imposed to protect people's security and privacy.

Señales

- Websites that use Facebook's "likes" are responsible for the user data that can be transmitted through this function, according to a ruling by the Court of Justice of the European Union on a German case (El Imparcial, 2019).
- Receiving economic compensation for providing our data is one of the alternatives to pay for the benefits this information provides to the companies and individuals who receive it (Rubio, 2020).



Regulatory alternatives

With the increasing speed of social, technological, and environmental changes, the traditional way of regulating is becoming obsolete because it does not respond as quickly as the changes that take place, and some situations go unregulated and, therefore, some actors remain unprotected.

Although we understand that the regulator is a follower of trends and forces and, therefore, regulations are a response to such trends and behaviors, the current speed of change forces regulators to think about alternatives to regulate the new phenomena because the traditional way of regulating becomes obsolete when facing these new social changes and dynamics.

Thus regulators are leveraging regulations based on principles that allow them to cover more situations by not referring to specific rules. Additionally, there are regulators, supervisors and control entities emerging that are much more technical, with expertise on the topics they deal with. This gives them a broader understanding of the situations and allows them to respond faster and adapt the regulations to the social changes that take place.



Subtendencias

- **Regulatory innovation:**

regulators are starting to regulate in different ways to respond to current dynamics. For example, sandbox and sunset rules, because changes in social trends are increasingly faster and demand new ways for the regulators to provide timely responses.

INDICATION.

Brazil, Mexico, and Colombia have permitted the use of sandbox in Latin America allowing them to become growth scenarios for the FinTechs (Colombia Fintech, 2019).

- **Self-regulation / co-regulation:**

- self-regulation came as a response to the lack of regulation by the State, as a good business practice in market situations, and as a way to anticipate regulations and avoid abusive ones.

In addition, self-regulation is also due to the fact that the industries know their own businesses best and they can propose technical regulations that are in keeping with the realities of their industries. This inspires regulators to establish, by regulation, the standards adopted by industry or to promote similar dynamics in other sectors or markets.

Even the current geopolitical scene can be considered an opportunity for private companies to take on a leading role in society by becoming allies of the regulators to create and implement their own regulations to deal with consumer demands. They can use what they know of their industry and the relationship with consumers to promote more appropriate and effective regulations.

In turn, co-regulation refers to the existence of a broad framework established by an authorized regulator, complemented by manuals of conduct, policies, and procedures by the subjects being monitored or supervised (Segovia Santodomingo & Desmet Villar, 2018).

INDICATION.

Facebook is trying to reduce the exposure to groups that publish false information, using a set of measures intended to combat the spread of this type of information through their social network (El Comercio, 2019).

- **¿Nuevos reguladores?**

There are now discussions about the legitimacy of supranational bodies to regulate issues that have a global impact with a large technical content, such as topics to regulate digital giants' (Facebook, Apple, Google, etc.), financial disclosure requirements, corporate governance, and corporate social responsibility, among others.

Additionally, supranational bodies are given greater influence, limiting the regulatory powers of each State, and imposing regulatory models that are common to a group of countries –that slowly extend to the rest of the world–, to reaffirm the behaviors and conducts of the prevailing social and economic order.

INDICATION:

The European Union is increasingly positioned as a key regulator on the global stage because their regulations on issues such as consumer protection, competition, environment, personal data, as safety in the workplace are echoed by the rules and regulations of countries outside the European bloc (Arndt-Basacle, Davidson, Gerloff, & Schultz, 2020).

Regulatory recognition and limitations of new market interactions

Technology has produced new forms of market interaction, new ways of doing business, new relationships between companies and consumers, and new ways to determine liabilities with the birth of new risk scenarios, especially due to the development of new technologies whose effects and risks are not yet clear.

The new ways of doing business, of relating to each other, mostly leveraged, and accelerated by technology, are a reason for regulators to start intervening these new behaviors. Advances in the digital world force regulators to intervene in market relationships and to propose new ways for risk prevention and control.



Subtendencias

- **Virtual marketplace:**

increased number of merchant transactions through digital platforms, digital and virtual market dynamics, digital business platforms and play rules. The extraterritoriality represented by the operations of these kinds of companies poses a challenge for regulators, not only in terms of fiscal and tax matters, but also for consumer guarantees and protections because currently applicable rules are outside the place where the consumer is located or the country of origin of the good or service provided.

That depends on a number of factors beyond the location of the client or supplier, and the consumer is often left at a disadvantage

INDICATION. The European Parliament approved Regulations intended to increase the transparency of online platforms and create a reliable and fair environment to encourage innovation. The norm refers to a number of platforms that are not necessarily based within the European Union but offer their services inside that territory and, therefore, are subject to the norm (Ripoll, 2019).

- **New means of exchange:**

the creation of virtual currencies, noncentralized payment methods without State backing, which create different interactions and problems, clearances, transactions using commodities, state concessions to companies, sales of future rights, which involve regulatory decisions on recognition, transnationality, and security.

INDICATION.

M-Pesa, created in Kenya, allows individuals without bank accounts to withdraw money, and receive and pay back loans using their cell phone minutes. This allows lower income individuals to avoid the fees and high costs of financial services by using their minutes as a quasi-currency (Diamandis, 2020).

- **Fintech:**

the rise of technological innovations in the financial sector, crowdfunding, nontraditional competitors in the financial sector, etc. This forces regulators to think about creating new rules, not only to maintain industry standards but also to protect those consumers who might be vulnerable to nonregulated figures.

For the regulator this also means thinking about the principles that should govern the activity and about eliminating the rules that become unnecessary for the provision of financial services, as opposed to financial inclusion and penetration, because this begins to reinforce the idea of the financial sector as lever for economic development through the promotion of financial inclusion.

INDICATION:

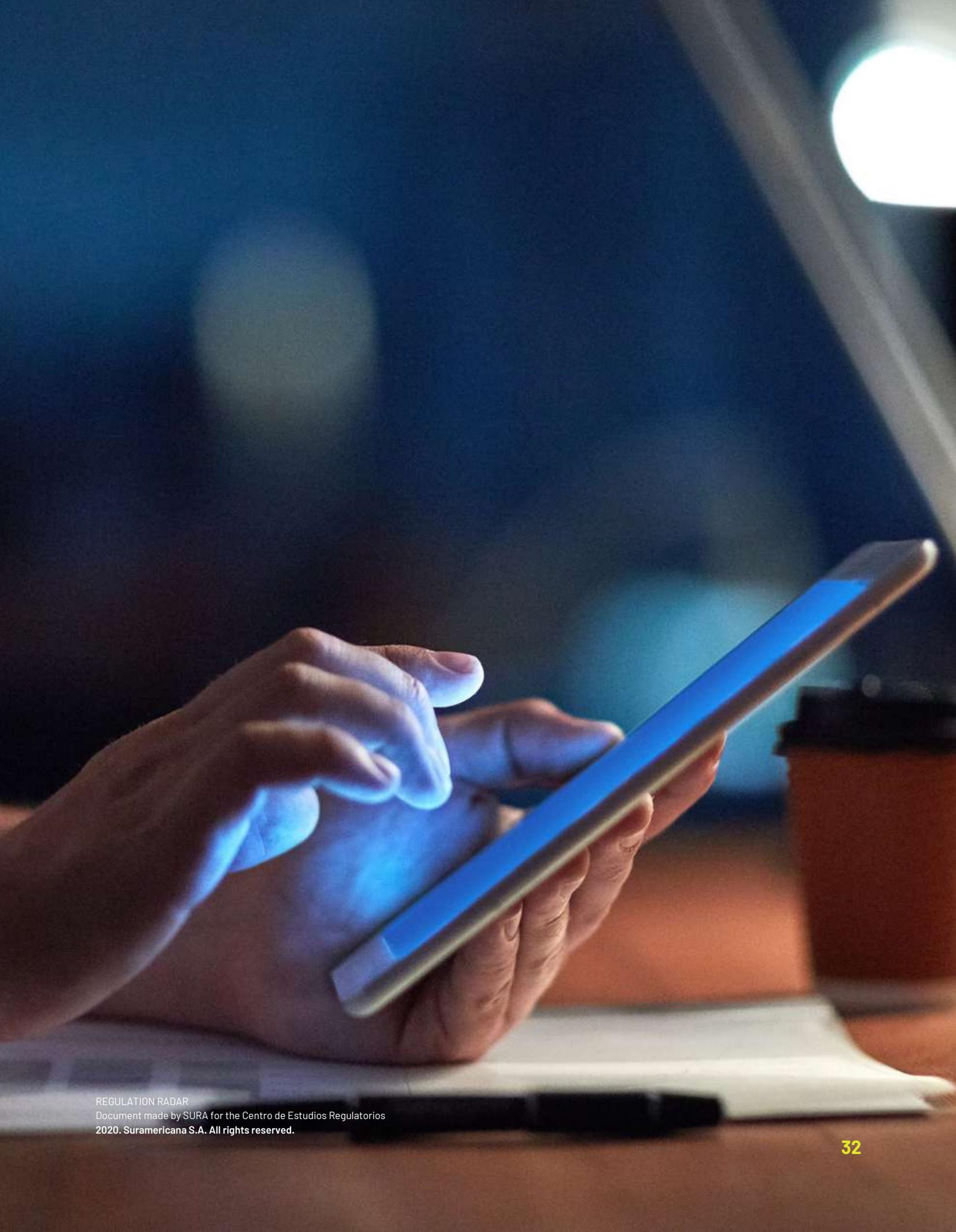
Brazil's Central Bank has been expanding the regulatory borders of the financial sector. The Bank established the requirements to implement open banking, which allows clients to access all their accounts and investments through a single platform, and to carry out transactions without having to access the platform of their own financial institution (Rocha, 2019).

- **Responsibilities over technological change:**

technological changes and advances usually entail the creation of new risks that could cause damages where determining liability is beyond the traditional models. Therefore, the creation of new risks and the resulting materialization of damages arising from the development of new technologies, require regulators to define certain rules for liability to make the parties responsible pay for the damages caused by the use and development of new technologies.

INDICATION:

Medicine is moving rapidly towards a time when autonomous robots will perform surgeries. This brings up questions such as who will be responsible for surgical errors? The manufacturer of the robot? The robot itself? Regulations are changing to answer these questions and assign responsibilities (Kunwar, 2020).



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