OECD Reviews of Regulatory Reform

Regulatory Policy in Argentina

TOOLS AND PRACTICES FOR REGULATORY IMPROVEMENT

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Foreword

High-quality regulations should help governments meet policy objectives, such as protecting consumers and the environment, without becoming too burdensome for citizens and businesses. Argentina has embarked on a series of reforms to improve the quality of its regulatory framework. This has focused mainly on improving the current stock of regulation and government procedures and the more effective use of information and communication technologies.

The *OECD Review of Regulatory Policy in Argentina* presents information on the policies, institutions and tools used by the Argentinian government to design, implement and enforce regulations. The review provides policy recommendations to strengthen the government's capacity to manage regulatory policy.

The review finds that Argentina is putting in place the necessary framework for regulatory policy. It has published several legal instruments to promote the use of regulatory management tools, such as *ex ante* assessment of draft regulations and stakeholder engagement. For instance, Argentina issued guidance to ensure that draft rules meet legitimate policy objectives and that the potential benefits for society outweigh the costs. Argentina should now ensure that this tool is systematically used, including to incorporate the views of citizens and businesses in the rulemaking process. Argentina has also made great strides in moving towards a "paperless government" by digitising internal government procedures.

The review also finds that several government agencies in Argentina, including secretariats and ministries, share responsibility for supervising the use of tools and practices to promote good regulation. Argentina has recently established a regulatory policy group, bringing together the current agencies and offices with responsibilities for the promotion of regulatory quality. This is a welcome development, which should, in time, ensure greater co-ordination and effectiveness of regulatory policy.

The review methodology draws on two decades of peer learning reflected in the *2012 Recommendation of the OECD Council on Regulatory Policy and Governance*, The recommendation identifies the measures that governments can and should take to support better regulation. These measures set a baseline for assessing regulatory management capacity in Argentina.

The OECD Regulatory Policy Committee leads the programme on regulatory governance with the support of the Regulatory Policy Division of the OECD Public Governance Directorate. Regulatory policy country reviews are a key part of the committee's programme.

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The work underlying this review was led by Manuel Gerardo Flores, Senior Economist, and by Andres Blancas, Economist. The following team members took primary responsibility for different sections of the review: Andres Blancas, Gloriana Madrigal and Manuel Gerardo Flores for context for regulatory policy and for policies and institutions; Delia Vazquez and Manuel Gerardo Flores for *ex ante* assessment of regulations; Gloriana Madrigal for administrative simplification; Andres Blancas for the governance of regulators; and Guillermo Morales and Andrea Perez for multilevel regulatory governance. Erik Perez provided research assistance. Adriana Garcia also contributed to the work. Marcos Bonturi, Nick Malyshev, Andrea Uhrhammer, Barbara Ubaldi and Arturo Rivera provided feedback to improve drafts of the report. Claudia Paupe lent administrative and organisation support. Jennifer Stein co-ordinated the editorial process.

The team included three peer reviewers from the members of the OECD Regulatory Policy Committee (RPC), who participated in the policy peer mission to Argentina and provided extensive input and feedback throughout the development of the review: Ruth Harries, Deputy Director, Better Regulation Executive, Department for Business, Energy and Industrial Strategy, United Kingdom; Wendy Liberante, Senior Policy Analyst, Office of Management and Budget, Office of Information and Regulatory Affairs, United States of America; and Hector Salas Camacho, at the time General Coordinator of Institutional Regulatory Improvement, National Regulatory Improvement Commission, Mexico.

The review is based on information collected through a questionnaire in January 2018. The review team also held meetings in Buenos Aires, Argentina, in February and April 2018, with a wide range of stakeholders, including government officials from several ministries and government agencies, representatives from the academia and business community, and experts in regulatory topics.

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Abbreviations and acronyms

AFIP	Federal Administration of Internal Revenue
AGN	General Audit Office of the Nation
ALADI	Latin American Association of Integration (*Asociación Latinoamericana de Integración*)
BIPM	International Bureau of Weights and Measures
BIS	Department of Business, Innovation and Skills of the United Kingdom
BRDO	Better Regulation Delivery Office of the United Kingdom
CABA	Autonomous City of Buenos Aires
CBD	Secretariat of the Convention on Biological Diversity
CITIES	Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNV	National Securities Commission
COAG	Council of Australian Governments
COFEFUP	Federal Civil Service Council of Argentina
COFEMA	Federal Council of Environment of Argentina
COFEMOD	Federal Modernisation Council of Argentina
CONAMER	National Commission of Regulatory Improvement of Mexico
DGTAL	CABA's General Legal, Technical and Administrative Directorates
DNU	Decree of Necessity and Urgency
EE	Electronic file system of Argentina
ENACOM	National Communications Agency
ENARGAS	National Gas Regulator
ENRE	National Electricity Regulator
FIRE	Remote audit system of the Revenue Agency of the Province

FTIS	Foreign Trade Information System
GDE	System of Electronic Management of Files
GDP	Gross Domestic Product
GEDO	Digital Generator of Official Documents
GGP	Gross Geographic Product
GMC	Common Market Group
IAF	International Accreditation Forum
IAIS	International Association of Insurance Supervisors
ICT	Information and Communication Technologies
IEC	International Electro technical Commission
IFAC	International Federation of Accountants
IFT	Federal Institute of Telecommunications of Mexico
IHO	International Hydrographic Organization
ILAC	International Laboratory Accreditation Cooperation
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INDEC	National Institute of Statistics and Census of Argentina
IOM	International Organisation for Migration
IOSCO	International Organization of Securities Commissions
IRC	International Regulatory Co-operation
iREG	Indicators of Regulatory Policy and Governance
ISO	International Organization for Standardization
IT	Information Technology
ITU	International Telecommunication Union
IUCN	International Union for Conservation of Nature
LACORS	The Local Authorities Co-ordinators of Regulatory Services of the United Kingdom
LGA	Local Government Association of the United Kingdom
MERCOSUR	Southern Common Market
MPT	Ministry of Production and Labour
NSC	National Securities Commission

OECD	Organisation for Economic Development and Co-operation
OIE	World Organisation for Animal Health
OMB	Office of Management and Budget of the United States
OZONE	Secretariat for the Vienna Convention and its Montreal Protocol – Ozone Layer
PBA	Province of Buenos Aires
RANON	Registry of Accessions to National Standards
RANOP	Registry of Accessions to Provincial Standards
RIA	Regulatory Impact Assessment
RRC	Regulatory Reform Committee
SADE	Integrated Digital System of Argentina
SALAR	Swedish Association of Local Governments
SCM	Standard Cost Model
SELA	Latin American and Caribbean Economic System
SENASA	National Service of Food Quality and Health of Argentina
SGN	General Administrator of the Nation
SIGAF-PBA	Digital system for public management of PBA's treasury
SLyT	Legal and Technical Secretariat of the Presidency
SLyT-CABA	CABA's Legal and Technical Secretariat
SLyT-PBA	PBA's Legal and Technical Secretariat
SPS	Sanitary and Phytosanitary
TAD	Remotely Conducted Administrative Procedures
TBT	Technical Barriers to Trade
TUS	Single Simplified Procedure of the Government Secretariat of Agribusiness
UNCITRAL	United Nations Commission on International Trade Law
UNIDO	United Nations Industrial Development Organization
VUCE	One-stop-shop for Foreign Trade
WCO	World Customs Organization
WHO	World Health Organization

WIPO	World Intellectual Property Rights Organization
WMO	World Meteorological Organization
WPS	World Port Source
WTO	World Trade Organization
WTO-SPS	WTO Sanitary and Phytosanitary Measures Agreement.
WTO-TBT	WTO Technical Barriers to Trade Agreement

Executive summary

The objective of regulatory policy is to ensure that regulations and regulatory frameworks work in the public interest. Argentina is currently putting in place a framework for an effective, whole-of-government regulatory policy.

The *OECD Review of Regulatory Policy in Argentina* describes how the Argentinian government designs, implements and enforces regulations. It discusses policies for administrative simplification, *ex ante* and *ex post* evaluation of regulations, stakeholder engagement practices and multilevel regulatory governance, among others. The review identifies policy recommendations based on best international practices and peer assessment to strengthen the government's capacity to manage regulatory policy.

Key findings

- Argentina has published several legal instruments to promote the use of regulatory management tools, such as *ex ante* assessment of draft regulation and stakeholder engagement. It has also put in place practices that support a high-quality regulatory framework, such as oversight on legal quality and the use of information and communication technology (ICT) tools for internal government processes.
- Regulatory quality is not the responsibility of a single ministry or agency in Argentina. Efforts to put regulatory policy into effect are spread among three bodies without defined oversight mechanisms, except for focused legal scrutiny.
- Argentina has established several components of *ex ante* assessment of draft regulation: legal scrutiny, technical analysis, cost-benefit analysis. However, they are not integrated in a standardised procedure, and cost-benefit analysis is only at the stage of early introduction.
- Argentina has established the legal foundations and tools to promote stakeholder engagement in the preparation of draft regulations. Nevertheless, there is no consistency or supervision in their application.
- Argentina has an active policy to make extensive use of ICT to make government processes completely electronic and paperless. In order to ensure these policies supporting good regulatory policy, it will be essential to clearly distinguish between procedures inside government offices and agencies (internal processes, communications, interactions) and formalities that citizens and business are obliged to submit (request of permits or licenses).
- Argentina has achieved significant progress in making all government processes electronic. More progress could be achieved in reducing burdens on citizens and businesses by simplifying formalities.

- Argentina has not yet developed a strategy to support subnational levels of government in improving regulatory quality. Co-ordination between the national and the subnational levels of government is carried out on a case-by-case basis. Nonetheless, an ambitious effort to support the digitisation of internal administrative procedures in subnational governments is in place.
- Subnational levels of government are starting to take steps to adopt regulatory management tools such as assessing the impact of regulation or engaging with stakeholders. In addition, administrative simplification, especially through digitisation, is being carried out as a means to improve and streamline the delivery of public services to citizens.

Key recommendations

- Argentina should aspire to have an articulated and full-fledged regulatory policy bringing together institutions, public policies and government actions to improve regulatory quality into a single coherent framework.
- As part of this policy, Argentina should establish a regulatory policy group, in which the current agencies and offices with responsibilities for the promotion of regulatory quality are included. Argentina should seek to grant legal status and a legal mandate to the regulatory policy group.
- Argentina should establish a well-defined and transparent co-ordination mechanism for the members of the regulatory policy group.
- Argentina should define the regulatory tools and practices that are priorities of its regulatory policy in order to make them compulsory for the national public administration.
- Argentina should strive for a full-fledged system of *ex ante* evaluation of draft regulation through the application of regulatory impact assessment (RIA). The main goal of the RIA system will be to create a culture within the Argentinian government whereby evidence informs policy decisions.
- The RIA system should bring together the existing elements of *ex ante* assessment – legal scrutiny and technical analysis – and add cost-benefit analysis.
- The RIA process should include provision for the consultation of draft regulation with stakeholders in a systematic manner.
- As part of consultation, regulators and agencies should have the obligation to inform stakeholders which comments will be used to amend the draft regulation, and which ones will be discarded, and the reasons why.
- The websites www.argentina.gob.arg and tramitesadistancia.gob.ar should have consistent information and include all the information on formalities for citizens and businesses of the central government.
- Argentina should define and implement a comprehensive administrative simplification strategy for citizen and business formalities, drawing on the experience gained so far in the e-government process, through the programme of Remotely Conducted Administrative Procedures (*Trámites a Distancia*) and by the Ministry of Production and Labour in reducing the cost of regulation.

- The strategy should have targets for reducing the administrative burdens on citizens and businesses and should establish priority sectors for reduction, depending on the most complex or cumbersome regulatory areas for citizens and businesses.
- The regulatory policy group should develop and implement governance arrangements coupled with incentives to co-ordinate with and support subnational levels of government. Such mechanisms should be designed to help local levels of government define their own regulatory strategies, while implementing national objectives. These arrangements should be part of the full-fledged regulatory policy recommended above.
- Subnational governments in Argentina should continue to develop systematised and permanent policies and practices to improve the quality of their regulations.

Assessment and recommendations

Policies and institutions for regulatory policy

The objective of regulatory policy is to ensure that regulations and regulatory frameworks are in the public interest. For regulatory policy to be effective, it must have political commitment of the highest level, follow a whole-of-government approach, and have the support of an array of institutions to make this policy work, including oversight bodies. This section provides a preliminary assessment of the current legal and institutional arrangement of the Government of Argentina to pursue a regulatory policy, including any policy statements and programmes that help implement the policy of regulatory quality.

Assessment

Argentina is working to establish the necessary framework for regulatory policy. It has issued several legal instruments to promote the use of regulatory management tools, such as* ex ante *assessment of draft regulation and stakeholder engagement, amongst others. Additionally, it has practices which contribute to seeking a high-quality regulatory framework, such as oversight on legal quality, and intensive use of information and communication technologies (ICT) tools on internal government processes. Nevertheless, these are efforts which, despite being a step in the right direction, provide an incomplete basis for the adoption of a full-fledged regulatory policy by line ministries and government agencies.

Recently, the Federal Government of Argentina issued a series of legal instruments that seek to promote the use of tools to improve the quality of the regulatory framework. Amongst them, *Decree 891/2017 for Good Practices in Simplification* issued by the President on November 2017 stands out. The decree establishes a series of principles and tools to improve the rulemaking process in Argentina and the management of the stock of regulation. The decree introduces tools on *ex ante* and *ex post* evaluation of regulation, stakeholder engagement, and administrative simplification, amongst others. Nevertheless, no formal oversight mechanisms have been established to supervise the use of these tools across line ministries and government agencies, which make implementation difficult and limit severely the potential to adopt a whole-of-government approach to regulatory policy.[1] A whole-of-government policy should provide clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits are maximised.

A lack of formal horizontal oversight mechanisms to supervise the use of tools also means that stakeholders cannot be confident in the consistency of analysis, which is critical to establishing stakeholder confidence in the activities of government.

Similarly, *Decree 1.172/2003* establishes a series of measures that promote stakeholder engagement in the development and revision of regulations. For instance, it establishes the legal provisions for the elaboration of regulations with public participation (*Bylaw for the Participative Drafting of Standards*) and legal provisions for the open meetings of regulatory agencies of utilities (*Bylaw for Open Meetings of the Regulators of Public Services*). There is evidence of recent employment of these instruments, notably in the development of energy regulation related to tariffs. However, the practice does not seem to be used systematically across the government.

In contrast, the practice of supervising the legal quality of instruments is performed extensively, although in a decentralised manner. The obligation for legal scrutiny is established in *Law 19.549 of Administrative Procedures*. The Legal and Technical Secretariat of the Presidency has to review and challenge the legal texts which are to be signed by the President or the Chief of Cabinet. Similarly, each ministry is responsible for checking the legal quality of instruments of subordinate level to be issued by them.

The Government of Argentina also pursues an active policy on the use of ICT tools which has the potential to reduce administrative burdens significantly for citizens and businesses. The efforts are headed by the Administrative Modernisation Secretariat, which has as objective to establish the internal government process completely digital. For instance, *Decree 733/2018* obliges all government processes to be completely digital.

These efforts show that Argentina is working to establish the necessary framework for regulatory policy. However, they represent actions that require further endeavours to establish a full-fledged regulatory policy. See Box 1 for examples of frameworks for regulatory policy in selected OECD countries.

Box 1. Example regulatory policy frameworks in OECD countries

Australia

In Australia, regulation is made at the federal level as well as by the states and territories, in the form of legislation and subordinate legislation and at a local government level as regulations and bylaws.

Australia is recognised internationally for its Deregulation Agenda and governance arrangements, particularly its approach to regulatory impact assessment (RIA). The Australian Government remains committed to improving the quality of its regulation, including minimising the burden of regulation on businesses, community organisations and individuals. The following are the offices that have outstanding tasks in the regulatory policy cycle:

- The Whole of Government Deregulation Policy team has been relocated to the Department of Jobs and Small Business following recent government administrative changes; it is responsible for systematic improvement and advocacy across government more generally.
- The Office of Best Practice Regulation (OBPR) at the Department of the Prime Minister and Cabinet reviews the quality of all RIAs and provides advice and guidance during their development, and its final assessment of RIAs is made public on a central register. The OBPR can ask departments to revise RIAs where quality has been deemed inadequate.

- The Office of the Parliamentary Counsel is an independent entity which is responsible for scrutinising the legal quality of regulations. Legal scrutiny is also provided by the Senate Standing Committee for the Scrutiny of Bills and the Senate Standing Committee on Regulations and Ordinances for primary laws and subordinate regulations respectively.
- The Australian Productivity Commission is an independent research and advisory body. It has evaluated Australia's regulatory policy system including RIA, regulator performance and *ex post* evaluations. It has undertaken a number of reviews in specific policy areas or sectors such as consumer affairs, the electricity sector and the labour market.

Canada

In Canada, the process for developing primary laws (acts) and subordinate regulations differs significantly. Subordinate regulations typically elaborate on the general principles outlined in acts and establish detailed requirements for regulated parties to meet.

The requirements for developing acts are outlined in the Cabinet Directive on Law-making. Legislative proposals introduced by the government are brought to cabinet for consideration and ratification, before being drafted and introduced in parliament. This includes documents relating to the potential impact of the proposal. While cabinet deliberations and supporting documents are confidential, a legislative proposal is often the end product of broad prior consultation with interested stakeholders.

The Cabinet Directive on Regulation (CDR) establishes the requirements for developing subordinate regulations. A RIA is mandatory and made public on a central registry, along with the draft legal text. An open consultation is conducted for all subordinate regulations and regulators must indicate how comments from the public were addressed, unless the proposal is exempted from the standard process. The CDR was adopted in 2018, replacing the previous Cabinet Directive on Regulatory Management. The CDR strengthens requirements for departments and agencies to undertake periodic reviews of their regulatory stock to ensure that regulations achieve intended objectives. It also enshrines regulatory co-operation and consultation throughout the regulatory cycle – including engagement with Indigenous peoples – and reinforces requirements for the analysis of environmental and gender-based impacts.

Mexico

In Mexico, since 2000 RIA and public consultation on draft regulation are mandatory for all regulatory proposals coming from the executive. In 2016, Mexico strengthened its RIA process by adding assessments of impacts on foreign trade and consumer rights, which complemented existing assessments on competition and risk. For the last stage of the regulatory policy cycle, since 2012 mandatory guidelines require the use of *ex post* evaluation of technical regulations, and since 2018 regulations with compliance costs have to be evaluated every five years.

RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approximately 34% of primary laws in Mexico. There is no formal requirement in Mexico for consultation and for conducting RIAs to inform the development of primary laws initiated by parliament.

A new General Law of Better Regulation was issued in May 2018. The law sets a very important milestone in the implementation of regulatory policy in Mexico; for instance, it requires subnational governments to adopt key tools such as RIA. Besides modernising the policy, it also established the National System of Better Regulation, specifying the duties and responsibilities of autonomous bodies and state and municipal governments. It is also remarkable that the Judicial and Legislative Powers will now have to register all their formalities in the National Inventory of Formalities, as well as a Citizen Observatory has to be created that will contribute to the oversight of the enforcement of the law.

Following the adoption of the General Law of Better Regulation, Mexico's oversight body in regulatory policy was transformed into CONAMER to reflect its broadened mandate. This has defined CONAMER's attributions and mandate, which is to promote transparency in the development and enforcement of regulations and the simplification of procedures, ensuring that they generate benefits that outweigh their costs. Some of CONAMER's core functions for pursuing a high-quality regulatory framework are: assess draft regulations through RIA, oversee the public consultation process of draft regulation, co-ordinate and monitor the regulatory planning agenda, promote simplification programmes and review the existing stock of regulations.

Source: OECD (2018[1]), *OECD Regulatory Policy Outlook 2018*, https://dx.doi.org/10.1787/9789264303072-en; Department of Jobs and Small Business of Australia (2019[2]), *Deregulation Agenda*, www.jobs.gov.au/deregulation-agenda (accessed on 9 February 2019).

A developed and institutionalised regulatory policy, in addition to contributing to evidence-based decision-making for regulation, can help fight regulatory capture. In light of the rapid rate of reform taking place in Argentine recently, Argentina may be at risk of regulatory capture, as it introduces major structural reforms to its economy in a system that may not offer substantial protection against vocal incumbents lobbying to protect their interests. Good regulatory practices can offer insulation from regulatory capture.

Exerting the policy of regulatory quality is not the responsibility of a single ministry or agency in Argentina. The existing efforts to put regulatory policy into effect are spread amongst three bodies without defined oversight mechanisms, except for focused legal scrutiny. An absence of an articulated whole-of-government responsibility to a given ministry or agency poses challenges in pursuing a co-ordinated approach to regulatory policy in Argentina.

Oversight of legal quality rests in part in the Legal and Technical Secretariat of the Presidency. Its tasks are focused on scrutiny of legal instruments to be signed by the President or Chief of Cabinet, although it is regularly consulted by other ministries for legal texts of a subordinate nature. The Legal and Technical Secretariat has also taken the role to promote and supervise the use of some of the regulatory management tools included in *Decree 891/2017 for Good Practices in Simplification*, such as *ex ante* assessment of regulation.

The Administrative Modernisation Secretariat champions the use of ICT in the internal organisation of the government. It also performs the tasks of overseeing that ministries and agencies across the government align and follow the internal regulations established for this objective, such as the employment of the model of electronic management of files and interoperability of databases.

Finally, the Administrative Production Secretariat of the Ministry of Production and Labour also gathers some duties on administrative simplification and has attributions to determine whether certain draft regulations will have an impact on productive (economic) activities. It has established the National Direction of Regulatory Policy in charge of administering an *ex ante* assessment system of draft regulation coming from the Ministry of Production and Labour for this purpose.

Table 1. Regulatory oversight functions and key tasks

Areas of regulatory oversight	Key tasks
Quality control (scrutiny of process)	• Monitor adequate compliance with guidelines/set processes • Review legal quality • Scrutinise impact assessments • Scrutinise the use of regulatory management tools and challenge if deemed unsatisfactory
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	• Gather opinions from stakeholders on areas in which regulatory costs are excessive and/or regulations fail to achieve its objectives • Reviews of regulations and regulatory stock • Advocate for particular areas of reform
Systematic improvement of regulatory policy (scrutiny of the system)	• Propose changes to improve the regulatory governance framework • Institutional relations, e.g. co-operation with international for a • Co-ordination with other oversight bodies • Monitoring and reporting, including report progress to parliament/government to help track success of implementation of regulatory policy
Co-ordination (coherence of the approach in the administration)	• Promote a whole of government, co-ordinated approach to regulatory quality • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle • Facilitate and ensure internal co-ordination across ministries/departments in the application of regulatory management tools
Guidance, advice and support (capacity building in the administration)	• Issue guidelines and guidance • Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)

Source: Based on OECD (2012[3]) *Recommendation of the Council on Regulatory Policy and Governance*, http://dx.doi.org/10.1787/9789264209022-en; OECD (2015[4]) *Regulatory Policy Outlook 2015*, http://dx.doi.org/10.1787/9789264238770-en.

It is not uncommon for OECD jurisdictions to have several oversight bodies. In this case, strong, institutionalised mechanisms are a key element to ensure an effective application of regulatory policy. The challenge in Argentina is that responsibilities and roles are not yet clearly defined, which is coupled with the absence of mechanisms of co-ordination in matters of regulatory policy.[2] A whole-of-government approach should ensure a holistic approach to considering the economic, social and environmental impacts. See Table 1 for a categorisation of functions and keys tasks of oversight bodies.

To date, Argentina has chosen to introduce elements of regulatory policy using an advocacy model: to promote the use of some regulatory management tools. While this model has its merits at early stages in the adoption of a policy that promotes regulatory quality, it still requires an agency with clear authority and responsibility for providing whole-of-government regulatory guidance. Moving forward, in order to ensure that regulatory management tools are used effectively across the policy cycle, clear oversight mechanisms are required.

The issuance of *Decree 891/17 for Good Practices in Simplification* represents one of the first stepping stones for the adoption of regulatory policy in Argentina. Similarly, *Decree 1.172/2003* establishes a legal platform to engage with stakeholders in the development of draft regulations and the revision of existing ones.

The focus of the government of Argentina has been to promote the use of the regulatory policy tools established in both decrees by line ministries and government agencies, but without establishing official mechanisms to supervise their application, even though the use of many of these tools is mandatory. This suggests that the Government of Argentina has opted for a model of advocacy on regulatory policy.

At the early stages of the implementation of regulatory policy, an advocacy model has the advantage of avoiding that the adoption of practices to promote regulatory quality becomes a burden for the government as a whole. Agencies which are suddenly obliged to perform additional tasks to their everyday activities, such as preparing a cost-benefit analysis for draft regulation, or seek simplification strategies, may resist in adopting these practices. Instead, in an advocacy model, champions on regulatory policy may emerge within the government and their efforts can be scaled up: agencies which adopt a specific tool effectively and realised that these tools actually made its core activity of regulating more effective. The emergence of champions may facilitate the adoption of the tools by other agencies.

The question in Argentina is the lack of a clear strategy for advocacy to promote the implementation of regulatory policy tools across line ministries and other government agencies. Although the role of advocacy has fallen in practice to the Legal and Technical Secretariat of the Presidency, it does not have an official whole-of-government mandate to do so to promote the several regulatory policy tools available.[3] This limits the effectiveness of the model, as this office has limited scope in the use of tools and resources at its disposal to perform the function of providing guidance and advocacy, such as informational campaigns, preparation of supporting materials such as manuals or guides, design and delivery of capacity building exercises, ongoing support for regulators in the use of the tools, amongst others.

Finally, in order to reap the full benefits of having an evidence-based decision-making process which leads to a regulatory framework of high quality, an advocacy model has to evolve to one with strong oversight, in which there is an agency effectively supervising that the tools to promote regulatory quality are effectively employed by line ministries and agencies.

In the international sphere, efforts to benefit from foreign and international experience remain limited. Argentina co-operates with selected partner countries, such as Brazil, and participates in a number of regional and international platforms. Several Economic Co-operation Agreements signed by Argentina, such as with Canada, Mexico and the United States, have specific chapters on regulatory improvement policy. Also, punctual efforts for harmonisation and mutual recognition in sectoral regulation exist. However, the fruits of these co-operation efforts are not systematically embedded into domestic rulemaking. Consideration of international standards is not an explicit obligation in the development of regulation at the national or the subnational level. Furthermore, co-operative efforts are scattered, escaping a horizontal strategy to contribute to Argentina's national development objectives.

Currently, there is no obligation to consider or reference international standards when in the Argentinian rulemaking process, except for a handful of agencies such as the energy regulators where there is an explicit mandate to consider international standards for technical and economic regulation. Regarding technical regulation, they are revamping the system where they envisage considering international standards. See Box 2 for examples from Australian and the United S on the consideration of international standards in domestic rulemaking.

Regarding regional fora, Argentina is part of the Southern Common Market (MERCOSUR)[4] and leads the technical regulation commission where there are efforts to harmonise regulation. Argentina is also part of the Latin American Integration Association (ALADI).

Recommendations

- Argentina should aspire to have an articulated and fully-fledged regulatory policy which brings together institutions, public policies and government actions aimed at increasing regulatory quality into a single coherent framework.
- As part of this policy, Argentina should aim at establishing the regulatory policy group, in which the current agencies and offices with responsibilities on the promotion of regulatory quality are included. Argentina should seek to grant legal status and a legal mandate to the regulatory policy group.[5]
- The regulatory policy in Argentina should seek to establish a well-defined and transparent co-ordination mechanism for the members of the regulatory policy group.
- Also, as part of this regulatory policy, Argentina should define the regulatory tools and practices that are the priorities on this policy in order to make them compulsory for the National Public Administration.

Box 2. How is the need to consider international standards and other relevant regulatory frameworks conveyed in Australia and the United States?

In **Australia**, there is a cross-sectoral requirement to consider "consistency with Australia's international obligations and relevant internationally accepted standards and practices" (Council of Australian Governments-COAG Best Practice Regulation). Wherever possible, regulatory measures or standards are required to be compatible with relevant international or internationally accepted standards or practices in order to minimise impediments to trade. National regulations or mandatory standards should also be consistent with Australia's international obligations, including the GATT Technical Barriers to Trade Agreement (TBT Standards Code) and the World Trade Organization's Sanitary and Phytosanitary Measures (SPS) Code. Regulators may refer to the Standards Code relating to ISO's Code of Good Practice for the Preparation, Adoption and Application of Standards. However, OECD (2017[5]) reports that to support greater consistency of practices, the Australian government has developed a Best Practice Guide to Using Standards and Risk Assessments in Policy and Regulation and is considering an information base on standards (both domestic and international) referenced in regulation at the national and subnational level.

In the **United States**, the guidance of the Office of Management and Budget (OMB) on the use of voluntary consensus standards states that "in the interests of promoting trade and implementing the provisions of international treaty agreements, your agency should consider international standards in procurement and regulatory applications". In addition, *Executive Order 13609 on Promoting International Regulatory Co-operation* states that agencies shall, "for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory co-operation council work plan". The scope of this requirement is limited to the sectoral work plans that the United States has agreed to in Regulatory Co-operation Councils. There are currently only two such councils, one with Canada and the other with Mexico.

Source: OECD (2018[6]), *Review of International Regulatory Co-operation of Mexico*, https://doi.org/10.1787/9789264305748-en; OECD (2017[5]), *International Regulatory Co-operation and Trade: Understanding the Trade Costs of Regulatory Divergence and the Remedies*, http://dx.doi.org/10.1787/9789264275942-en.

- The regulatory policy should also allocate oversight duties clearly across the members of the regulatory policy group for the range of regulatory tools to implement.
- International Regulatory Co-operation (IRC) can help reinsert Argentina in the global economy. Argentina should seek to perform a more profound mapping and review of its IRC practices. This IRC review should help, amongst others, to: i) enhance IRC practices by ministries and regulators or by the government as a whole, such as bilateral and regional agreements or agreements with international organisations, with the objective to adopt international practices in the national regulation; and ii) embed systematically an IRC component in the domestic rulemaking process, including in technical regulation.

Ex ante assessment of regulation and public consultation

Improving the evidence base for regulation through an *ex ante* (prospective) impact assessment of new regulations is one of the most important regulatory tools available to governments. The aim is to improve the design of regulations by assisting policymakers to identify and consider the most efficient and effective regulatory approaches, including broader economic impacts, relevant science and various alternatives (e.g. the non-regulatory alternatives), before they make an evidence-based decision. Additionally, a process of communication, consultation and engagement which allows for public participation of stakeholders in the regulation-making process as well as in the revision of regulations can help governments understand citizens' and other stakeholders' needs and improve trust in government. This section addresses Argentina´s practices in *ex ante* assessment of regulation and will discuss the actions that Argentina undertakes to engage with stakeholder in the process of rulemaking.

Assessment

Argentina has established several elements for an* ex ante *assessment of draft regulation: legal scrutiny, technical analysis, cost-benefit analysis, and basements of draft regulation on the productive sector. However, they are not integrated into a standardised procedure, and the cost-benefit analysis is only at the stage of early introduction.

For the elaboration of new regulation, the ministries and public administration bodies in Argentina usually carry out two different types of analysis to justify the decision to issue a new regulation. There is the legal report, in which the analysis that has to be made to determine the legal coherence with the current regulatory framework, as well as the legal feasibility. The legal basis for the legal report is in *Law 19.549 of Administrative Procedures*. The other analysis is the technical report, which includes all the information considered to provide the technical justification for the regulatory proposal.

However, there is a lack of a systematic standardised procedure to carry out both reports, which has resulted in a diversification of criteria for their preparation, as well as wide differences in their content. In some technical reports, legal arguments are employed to provide technical justification, which could also generate a possible duplication in the information. In most cases, the technical report also includes a budgetary impact analysis to determine the fiscal viability of the regulatory project.

Additionally, *Decree 891/2017 for Good Practices in Simplification* introduced the inclusion of cost-benefit analysis in the elaboration of draft regulation, although there is no whole-of-government formal oversight body providing guidance on the expectations for impact assessment and to supervise their effective implementation. Additionally, there seem to be limited capabilities amongst public officials to perform this assessment.

The Ministry of Production and Labour issued *Resolution 229/2018* which obliges all offices and agencies belonging to this ministry to submit an impact report along with their draft regulation to the Productive Simplification Secretariat. This secretariat examines the report and the draft regulation in order to define whether the draft regulation addresses a legitimate public policy problem, and whether the costs of the regulation are justified with the expected benefits, and whether it complies with the precepts on regulatory quality established in *Decree 891/2017 for Good Practices in Simplification*. Draft regulations which are non-compliant are returned, although the opinion of the Productive Simplification Secretariat is not binding. As noted, this process is exclusive for draft regulation of the Ministry of Production and Labour.

The absence of an integrated procedure for the three different types of analyses (legal, technical and cost-benefit analysis) limits the potential of a policy that seeks to issue regulations of high quality which provide net-benefits to the society. See Box 3 for an example of the RIA system in the United States.

Box 3. The US RIA model

The main reasons that led to the introduction of RIA in the United States were: i) the need to ensure that federal agencies would justify the need for regulatory intervention before regulating, and would consider light-touch means of intervention before engaging into heavy-handed regulation; ii) the need for the Centre of Government to control the behaviour of agencies, to which regulatory powers have been delegated; and iii) the need to promote the efficiency of regulatory decisions by introducing an obligation to perform cost-benefit analysis within RIA.

Underlying the introduction of RIA was, from a more general viewpoint, the idea that policymakers should be led to make informed decisions, which are based on all available evidence. In the case of the United States, this idea was initially coupled with a clear emphasis on the need to avoid imposing on the business sector unnecessary regulatory

burdens, a result that was in principle guaranteed by the introduction of a general obligation to perform cost-benefit analysis of alternative regulatory options and justify the adoption of regulation on clear "net benefits". Although the US system has remained almost unaltered, the initial approach was partly modified: the emphasis was shifted from cost-reduction to achieving a better balance between regulatory costs and benefits.

The first steps of RIA were also accompanied by a reform of the governance arrangement adopted by the US administration for the elaboration of regulatory proposals:

- RIA was introduced as a mandatory procedural step in an already existing set of administrative rules.
- The introduction of RIA required the creation of a central oversight body in charge of scrutinising the quality of RIAs produced, the Office of Information and Regulatory Affairs (OIRA).
- A focus on cost-benefit analysis. The US RIA system is clearly and explicitly based on the practice of cost-benefit analysis (CBA).

Source: OECD (2015[7]), "Regulatory Impact Assessment and regulatory policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, https://doi.org/10.1787/9789264241800-5-en.

Argentina has established the legal foundations and tools to promote stakeholder engagement in the preparation of draft regulation. Nevertheless, there is a lack of a predictable process and lack of supervision in their use.

The Argentine government has implemented various actions to promote citizen participation in the development of regulation. Since 2003, *Decree 1.172/2003* established several bylaws which provide the legal basis for stakeholder engagement in the process of rulemaking. It included the following:

- *Bylaw for the Participative Drafting of Standards*.
- *Bylaw for Open Meeting of the Regulators of Public Services*.
- *Bylaw of Access to Public Information for the Executive Power*.

On November 2017, *Decree 891/17 for Good Practices in Simplification* was issued, which provides in Article 6 the obligation for government agencies to increase citizen participation mechanisms in the rulemaking process.

Most of the evidence collected suggests that the most common way to perform public consultation is through ad hoc meetings and public audiences. On other cases, more sophisticated examples of public consultation have been carried out whenever the subject matter of the regulation is anticipated to be controversial.

This approach can be a source of regulatory capture if documents are made freely available without any conscientious effort to reach out to a broad range of target groups. As a minimum, there should be some kind of communication that a consultation has been made public.

Additionally, there are no institutional mechanisms in place to establish a standardised procedure and supervise the effective employment of these tools. Regarding the comments that are provided by stakeholders, there is no obligation for government

agencies to consider them in the normative proposal, and to provide responses to stakeholders.

In May 2016, the website https://consultapublica.argentina.gob.ar/ was implemented with the aim of strengthening the efforts on open government policy. The platform can be used to undertake public consultation in the development of new regulation, but it has not been used for this purpose yet.[6]

The benefits of consulting stakeholder in the rulemaking process to collect evidence on the fitness of proposed rules are limited due to their lack of integration into a single *ex ante* assessment process and lack of oversight. The most effective comment processes provide meaningful opportunities (including on line) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis, including allowing for comments on the draft text of a rule and the supporting regulatory impact assessment. See Box 4 for an example of consultation guidelines from the United Kingdom.

Box 4. Consultation guidelines: The case of the United Kingdom

Increasing the level of transparency and increasing engagement with interest parties improves the quality of policymaking by bringing to bear expertise and alternative perspectives and identifying unintended effects and practical problems.

Prior to replacing it with the much shorter *Consultation Principles* in 2012 (updated in 2016), the United Kingdom had a detailed *Code of Practice on Consultation* (published in 2008), which aimed to "help improve the transparency, responsiveness and accessibility of consultations, and help in reducing the burden of engaging in government policy and development".

Although not legally binding and only applying to formal, written consultations, the Code of Practice constitutes a good example of how a government can provide its civil servants with a powerful tool to improve the consultation process. The 2016 Consultation Principles highlight the need to pay specific attention to proportionality (adjusting the type and scale of consultation to the potential impacts of the proposal or decision being taken), consider the increasing use of digital methods in the consultation process and reduce the risk of "consultation fatigue".

The 16-page Code of Practice was divided into 7 criteria, which were to be reproduced as shown below in every consultation:

- **Criterion 1:** When to consult. Formal consultations should take place at a stage when there is scope to influence the policy outcomes.
- **Criterion 2:** Duration of consultation exercises. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- **Criterion 3:** Clarity of scope and impact. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs of the proposals.
- **Criterion 4:** Accessibility and consultation exercises. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

- **Criterion 5**: The burden of consultation. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Criterion 6**: Responsiveness of consultation exercises. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Criterion 7**: Capacity to consult. Officials running consultations should seek guidance on how to run an effective consultation exercise and share what they have learned from the experience.

An example of a UK government response to the consultation can be found at https://www.gov.uk/government/consultations/tackling-intimidation-of-non-striking-workers.

Source: UK Department for Business, Enterprise and Skills (2008[8]), *Code of Practice on Consultation*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf (accessed on 9 February 2019; UK Department for Business, Energy and Industrial Strategy (2016[9]), *Consultation Principles 2016*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf (accessed on 9 February 2019).

There are examples of a higher degree of adoption of practices of* ex ante *assessment of draft regulation within the Argentinian government. These experiences could be leveraged to promote the use of this tool across the federal government.

The evidence collected seems to suggest that there are examples of more intensive use of practices on *ex ante* evaluation of draft regulations and public consultation. The National Securities Commission, the National Gas Regulator (ENERGAS) and the National Electricity Regulator (ENRE) regularly carry out a more sophisticated technical analysis as part of the process of developing new regulations, and it sometimes includes a cost-benefit analysis. The Ministry of Production and Labour also reports to carry out on occasion cost-benefit analysis for draft regulations to assess potential impacts on productive activities.

In the case of the National Communications Agency (ENACOM), it recently signed a Memorandum of Understanding between the Federal Institute of Telecommunications of Mexico, which includes as one of the areas of co-operation the exchange of good practices based on the use of regulatory impact assessment.

These valuable experiences could be documented and promoted across government agencies to show examples of good practice through capacity building exercises and other support mechanisms. Learning from peers can be an effective way to encourage the adoption of regulatory quality tools.

Recommendations

- Argentina should strive for the establishment of a full-fledged system of *ex ante* evaluation of draft regulation through the application of the regulatory impact assessment (RIA). The main goal of the RIA System will be to create a culture within the Argentinian government whereby evidence informs policy decisions. See Table 2 for examples of RIA systems in selected OECD countries.

Table 2. Application of RIA, responsible body and guidelines

Country or region	Application of RIA	RIA's responsible body
Australia	RIA is mandatory for all regulation sent to the Cabinet, even if there are no evident regulatory impacts.	The Office of Best Practice Regulation (OBPR) reviews the quality of all RIAs and provides advice and guidance during their development, and its final assessment of RIAs is made public on a central register. The OBPR can ask departments to revise RIAs where quality has been deemed inadequate.
Canada	Departments and agencies must conduct a RIA on all regulatory proposals, to support stakeholder engagement and evidence-based decision making. Departments and agencies have to comply with relevant acts, regulations, and Treasury Board policies, and adhere to guidance, tools and directives, and are to engage with the Regulatory Affairs Sector at the Treasury Board of Canada Secretariat.	The Treasury Board of Canada Secretariat (TBS) oversees subordinate regulations and provides a review and challenge function to ensure quality RIA, consultation, and regulatory co-operation. The Department of Justice has a statutory obligation to examine all proposed regulations for legality and conformity with drafting standards. The Standing Joint Committee for the Scrutiny of Regulations scrutinises regulations, including legal and drafting issues. For primary laws, the Privy Council Office supports Cabinet in its assessment and approval of legislative proposals destined for parliamentary consideration.
Mexico	RIA is mandatory all primary laws or subordinate regulations coming from the executive power, exempting the Secretariat of National Defence and Navy.	The National Agency of Better Regulation (CONAMER) is the body in charge of reviewing all RIAs. If a RIA is unsatisfactory, for example, if it does not provide specific impacts, CONAMER can request the RIA to be modified, corrected or completed with more information. If the amended RIA is still unsatisfactory, CONAMER can ask the lead ministry to hire an independent expert to evaluate the impacts, and the regulator cannot issue the regulation until CONAMER's final opinion.
European Union	RIA is mandatory for legislative and non-legislative initiatives with important economic, environmental and social effects. Since 2015, Inception Impact Assessments, including an initial assessment of possible impacts and options to be considered, are prepared and consulted on for four weeks, before a full RIA is conducted.	The Commission's Secretariat General (SG) is the Centre of Government body responsible for overseeing Better Regulation. The SG reviews the RIAs, it also serves as the secretariat to the Regulatory Scrutiny Board (RSB), which checks the quality of all impact assessments and major evaluations of EU legislation. Outside the Commission, the European Parliament (EP)'s Directorate for Impact Assessment also reviews RIAs attached to draft legislation submitted by the Commission.

Source: OECD (2018[1]), *OECD Regulatory Policy Outlook 2018*, https://dx.doi.org/10.1787/9789264303072-en; Treasury Board of Canada Secretariat (2018[10]), *Policy on Cost-Benefit Analysis*, https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-cost-benefit-analysis.html (accessed on 9 February 2019).

- The RIA system should bring together under an articulated process the existing elements of *ex ante* assessment – legal scrutiny and technical analysis – and should add the additional element of a cost-benefit analysis.
- The cost-benefit analysis should include the expected effect on economic activity under the responsibility of the Ministry of Production and Labour, as well as the impact on consumers, small businesses, amongst others. See Box 5 for examples of assessment of benefits and costs in selected OECD countries.

Box 5. Ensuring correct assessment of cost and benefits: Some country examples

In **Australia,** a preliminary assessment determines whether a proposal requires a RIA and helps to identify best practice for the policy process. A RIA is required for all Cabinet submissions. There are three types of RIAs: Long Form, Standard Form and Short Form. Short Form assessments are only available for Cabinet Submissions. Both the Long Form and Standard Form must include, amongst other requirements, a commensurate level of analysis. The Long Form assessment must also include a formal cost-benefit analysis.

In **Canada** for the case of subordinate regulations, when determining whether and how to regulate, departments and agencies are responsible for assessing the benefits and costs of regulatory and non-regulatory measures, including government inaction. This analysis should include quantitative measures and, if it is not possible to quantify benefits and costs, qualitative measures. When assessing options to maximise net benefits, departments are to: identify and assess the potential positive and negative economic, environmental, and social impacts on Canadians, business (including small business), and government of the proposed regulation and its feasible alternatives; and identify how the positive and negative impacts may be distributed across various affected parties, sectors of the economy, and regions of Canada. Treasury Board of Canada Secretariat provides guidance and a challenge function throughout this process.

In the **United States**, for the case of subordinate regulation, agency compliance with cost-benefit analysis is ensured through review of the draft RIA and draft regulation by the Office of Information and Regulatory Affairs under *Executive Order 12866*.

Source: OECD (2015[4]) *Regulatory Policy Outlook 2015*, http://dx.doi.org/10.1787/9789264238770-en.

- Provision should be taken to establish a proportionality criterion in the preparation and assessment of the cost-benefit analysis, whereby a monetised quantification of the expected benefits and costs is compulsory only for high-impact regulation; and other techniques are used for the rest, including qualitative approaches. See Box 6 for some country examples of threshold tests to apply RIA.

Box 6. Threshold tests to apply RIA: Some country examples

Belgium applies a hybrid system. For example, of the 21 topics that are covered in the RIA, 17 consist of a quick qualitative test (positive/negative impact or no impact) based on indicators. The other four topics (gender, small and medium-sized enterprises [SMEs], administrative burdens, and policy coherence for development) consists of a more thorough and quantitative approach, including the nature and extent of positive and negative impacts.

Canada applies RIA to all subordinate regulations but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management's principle of proportionally, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors:

- Low impact: Costs less than CAD 10 million present value over a 10-year period or less than CAD 1 million annually.
- Medium impact: Costs CAD 10 million to CAD 100 million present value or CAD 1 million to CAD 10 million annually.
- High impact: Costs greater than CAD 100 million present value or greater than CAD 10 million annually.

Also, when there is an immediate and serious risk to the health and safety of Canadians, their security, the environment, or the economy, the Triage Statement may be omitted and an expedited RIA process may be allowed.

Mexico operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt from RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a "calculator for impact differentiation", whereas a result of a ten questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains fewer details in the analysis.

New Zealand employs a qualitative test to decide whether to apply RIA to all types of regulation. Whenever draft regulation falls into both of the following categories, then RIA is required: i) the policy initiative is expected to lead to a Cabinet paper; and ii) the policy initiative considers options that involve creating, amending or repealing legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012).

The **United States** operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for "economically significant" regulations (which are a subset of all "significant" regulations) is set out in Section 3(f)(1) of *Executive Order 12866*: "Have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities".

In the **European Commission,** a qualitative test is employed to decide whether to apply RIA for all types of regulation. Impact assessments are prepared for commission initiatives expected to have significant economic, social or environmental impacts. The Commission Secretariat General decides whether or not this threshold is met on the basis of a reasoned proposal made by the lead service. Results are published in a roadmap.

Source: OECD (2015[4]) *Regulatory Policy Outlook 2015*, http://dx.doi.org/10.1787/9789264238770-en.

- The RIA process should include provision for the consultation of draft regulation with stakeholders in a systematic manner.
- As part of the consultation tasks, regulators and agencies should have the obligation to inform stakeholders which comments will be used to amend the draft regulation, and which ones will be discarded, and the reasons why.

- The regulatory policy group should allocate clear responsibilities across their members for the oversight of the RIA system, including the consultation stage.
- Argentina should consider granting the regulatory policy group the capacity to return RIAs and delay the publication of regulation should the analysis, explanations and justifications of the RIA are deemed inappropriate, or if the consultation process was not undertaken properly.
- Argentina should consider the application of a staged approach to the introduction of the RIA system. As part of a pilot programme, the most developed practices on *ex ante* assessment of draft regulation within the Argentinian government could be leveraged to promote the adoption of the RIA in a defined group of agencies. The experience acquired and the lessons learned in the pilot phase could then be exploited to roll out a wider RIA programme across the Argentinian government.
- For the purpose of embarking on a pilot programme on RIA, Argentina should invest in generating capacities in government officials on topics of regulatory policy in general and on methodologies of impact assessment.

Administrative simplification and management of the stock of regulation

Administrative simplification is a tool used to review and simplify the stock of regulations. Reducing the administrative burdens of government regulations on citizens, businesses and the public sector through administrative simplification should be a part of the government's strategy to improve economic performance and productivity. Additionally, the evaluation of existing regulations through *ex post* impact assessment is necessary to ensure that regulations that are in place are effective and efficient. In this section, recent and current initiatives and practices implemented by the Government of Argentina on administrative simplification and *ex post* assessment of regulation are assessed.

Assessment

Argentina pursues an active policy on the extensive use of ICT with the aim of establishing a digital and paperless government. In order to boost the benefits of these initiatives in the context of regulatory policy, it will be essential to continue making a clear distinction between procedures inside government offices and agencies (internal processes, communications, interactions) and formalities which citizens and business are obliged to submit (request of permits or licenses).

Argentina is currently engaged in an ambitious project to make all government processes electronic and paperless. The efforts are led by the Administrative Modernisation Secretariat. Several decrees have been issued to provide the legal basis and framework for these efforts, amongst them, *Decree 434/2016*, *Decree 561/2016* and *Decree 733/2018*.

The modernisation process follows a cross-layer strategy. The starting point and main driver of such modernisation is the establishment of all internal processes and communication within and between public entities through an electronic platform, which is already operational. This strategy took its inspiration and is equivalent to the one implemented in the city of Buenos Aires a few years ago. The aim is to have a "paperless government".

At the outset of the preparation of this report, the electronic strategy had not yet reached for the most part the formalities which citizens and business are obliged to submit to the government to start an economic activity or request a service, such as submission for

approval of permits and licenses, with few exemptions. At the time of finishing this report, the Administrative Modernisation Secretariat has implemented an extensive programme to make electronically available a large number of formalities for citizens and businesses on line, through the programme of "distance formalities".

One of the apparent reasons of the slow pace in progress in electronic formalities for businesses and citizens was in part due to the fact that both the internal procedures of the government (internal processes, communications, interactions within and between officials and agencies) and the citizen and business formalities (request of permits and licences) are referred to as *trámites*. Even though the two concepts are related, because in the end the citizen and business formalities will necessarily require the use internal government processes, it is necessary to continue having a clear distinction between them to have an effective regulatory policy.

In order to devise and implement an effective administrative simplification strategy which reduces burdens in the economy, the citizen and business formalities have to be clearly identified and defined as a separate set from the internal government procedures. See Box 7 for an example of a programme on administrative simplification from the United Kingdom directed to formalities for citizens and businesses.

Box 7. Red tape challenge in the United Kingdom

Between 2011 and 2014, the Cabinet Office of the United Kingdom carried out the Red Tape Challenge. This initiative aimed at reviewing rules and regulations of six general topics (equalities, health and safety, environment, employment-related law, company and commercial law and pensions) and those of specific sectors or industries.

The assessment of the regulations was based on the following procedure:

1. Every few weeks, specific topics were open to comments from citizens, businesses and society organisations.
2. Comments were posted on line and sector champions and departmental leaders were in charge of providing feedback and answers.
3. Contributions were analysed and used as input in the development of proposals for regulatory reform.
4. The Ministerial "Star Chamber" reviewed the proposals and made recommendations. Departments had to scrap burdensome regulations unless they could justify them to the "Star Chamber".
5. Departments responded to the recommendations of the "Star Chamber" and prepared proposals for the Reducing Regulation Committee.
6. Policies were implemented.

The challenge accounted for over GBP 10 billion in savings for businesses and 3 095 regulations scrapped or improved.

Source: UK Cabinet Office (2015[11]), *The Red Tape Challenge Reports on Progress*, https://webarchive.nationalarchives.gov.uk/20150423095857/http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/ (accessed on 9 February 2019).

Argentina provides free-access to current regulation and the judiciary information stock through digital databases which goes towards OECD standards. At the start of the preparation of this report, Argentina did not have a complete inventory of citizen and business formalities, which is one of the primary blocks for regulatory transparency and administrative simplification. Significant progress has been made since then, but challenges remain.

Argentina has invested in free-access digital databases with legislative (www.infoleg.gob.ar) and judicial (www.saij.gob.ar) information. Both web portals are an important source of legal information at federal, provincial and city level (City of Buenos Aires). These web portals, along with the Official Gazette (www.boletinoficial.gov.ar), are practices in line with OECD standards, as they provide and spread information about current regulation.

Citizen and business formalities comprise the requirements that citizen and business must submit to the government to undertake certain economic or social activities. The website www.argentina.gob.ar is a government platform which brings together information on citizen and business formalities, and provides a single entry point for users to access government information, formalities and services. The legal foundation of the site is *Decree 87/2017*. The site provides information on and access to formalities; and at the onset of the preparation of this report, it was possible for only some of them to submit information online. The site also shows elements consistent with an organisation of information according to life events*:* citizens and business formalities clustered by topics such as work and labour, education or opening a business. At the finalisation of this report, the website was linked to the sister website tramitesadistancia.gob.ar, which now allows citizens and business to submit and receive information on line for a large number of formalities.[7]

Despite this progress, the evidence collected is that most of the line ministries do not have a list which identifies the complete stock of citizen and business formalities under their jurisdictions. Therefore, it is not possible to determine whether the websites www.argentina.gob.arg and tramitesadistancia.gob.ar hold the complete inventory of formalities for business and citizens at the federal level in Argentina. This situation imposes large challenges for a programme on administrative burden reduction for citizens and business, as the first building block is to have an inventory of information obligations clearly defined. See Box 8 for examples on inventories of formalities on selected OECD countries.

Box 8. Examples of inventories of formalities in selected OECD countries

With the increased use of ICT, governments have the opportunity to reduce the administrative burdens that citizens and businesses face due to government formalities. Users of public services do not necessarily know the name or sequence of formalities that they need to follow, which is why it is important to organise information based on life cycle events and clear and simple topics. Finally, allowing for interoperability to the public administrations' websites reduces the time devoted to gathering information and allows for a simplification in the number of information requirements.

In **Australia**, all the information regarding the central and local governments is located on the website www.australia.gov.au. The portal is based on life cycle events and services offered by the government. For each topic, it includes relevant subtopics, direct links to

specific government agencies, provides guidance on particular issues and, in some cases, supply the forms or formats required. Also, this web page interconnects with www.my.gov.au, a site where Australian citizens can register and create a profile. This portal grants access to online services provided by the government such as financial aid, healthcare and housing.

Furthermore, the government's website includes information on Australian departments and agencies, contact details, links to annual reports and media releases and has a section where users can provide feedback on their experience.

The **United Kingdom** follows an approach to its government website www.gov.uk that is very similar to that in Australia. The services provided by the government are classified according to life events and clear topics such as environment, immigration, crime, etc. Moreover, the site gathers the web pages of all of the government departments and those of many agencies and public bodies. It holds the announcements, publications, statistics and consultations of 25 ministerial departments and 385 bodies. Finally, the site also includes performance data for government services. Indicators on user satisfaction, cost per transaction, completion rate of government services and digital take-up.

Source: Government of Australia (n.d.[12]), *australia.gov.au*, https://www.australia.gov.au/ (accessed on 9 February 2019); Government of Australia (n.d.[13]), *myGov*, https://my.gov.au/LoginServices/main/login?execution=e1s1 (accessed on 9 February 2019); UK Government (n.d.[14]), *GOV.UK*, https://www.gov.uk/ (accessed on 9 February 2019).

Argentina has achieved significant progress in establishing all government processes electronically. More progress in the reduction of burdens through the simplification of formalities for citizens and businesses can be achieved.

Argentina is engaged in an ambitious programme to switch all government procedures to electronic means, which comprises the digitisation of all internal government processes and citizens and business formalities.

The potential rewards of this policy can be significant. The increasing and intensive use of digital tools and platforms can help to streamline and simplify day-to-day internal government processes and activities. This may ultimately benefit citizens and businesses in their dealings with the bureaucracy, thus streamlining and facilitating government-citizen interaction.

Yet, despite the impressive progress in e-government, and the evolution towards a digital government, scarce evidence of the employment of simplification strategies beyond the use of ICT was found, with some exemptions. For instance, *Decree 1.079/2016* is currently under development and citizens can submit information through the website www.argentina.gob.ar. In other cases, there is evidence that official response times for permits and licenses have been reduced. Additionally, the Ministry of Production and Labour has made progress in the reductions of administrative burdens and reported savings of ARS 21 million due to the simplification of 43 formalities.

The pursuit of a strategy to reduce administrative burdens for citizens can bring about large benefits: simpler formalities can boost economic activity as citizens and business reduce the resources allocated to fill formats and visit government offices, which benefit more significantly micro and small firms. Additionally, the perception of citizens and business on government efficiency can be improved.

These potential benefits could be realised by means of a prioritisation strategy on administrative simplification with effective oversight. Argentina has in place the legal framework to embark in the devising and application of such a strategy, although it requires establishing a clear mechanism of supervision. This legal framework includes *Decree 891/17 for Good Practices in Simplification*, *Decree 1063/2016*, and *Decree 733/2018*, amongst others. An example that a prioritising strategy to improve regulation and simplify formalities should lead the strategy of digitalisation of internal government procedures is the issuance of *Decree 27/2018 of De-bureaucratisation and Simplification*, which later on led to *Law 27*, which included the issuance of three laws, including *Law 27.444 of Simplification and De-bureaucratization for the Productive Development of the Nation*.

Box 9. Administrative burdens reduction in the European Union

In 2007, the European Union introduced an initiative aimed at eliminating 25% of the administrative burdens faced by businesses. The Programme for Reducing Administrative Burdens in the European Union identified 13 priority areas, which accounted for EUR 123.8 billion in burdens. Based on the idea that information obligations should be identified, measured and reduced, the European Commission proposed a methodology that was an adaptation of the Standard Cost Model (SCM). It is worth mentioning that the programme did not intend to change the original objectives of the regulations, and it proposed a streamlining and optimisation in the way regulations are implemented.

The initial document drew on the experiences of member states who already had carried out a burden reduction exercise and identified the following good practices for the simplification of the administrative costs that businesses face:

1. Reduce the frequency of reporting.
2. Eliminate duplicities or overlaps in information requirements.
3. Promote the use of electronic channels and reduce paper-based formalities.
4. Introduce thresholds to limit the number of information requirements.
5. Use a risk-based approach to the request of information.
6. Review the relevance or validity of the information requirements.
7. Provide clarification and guidance on regulations and compliance.

The target proposed was achieved, reducing administrative burdens by 25%. Future gains due to the streamlining of procedures and elimination of obsolete requirements could boost the EU's gross domestic product (GDP) by 1.4%.

Source: Commission of the European Communities (2007[15]), *Action Programme for Reducing Administrative Burdens in the European Union*, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0023&from=EN (accessed on 16 January 2019); European Commission (2012[16]), *Action Programme for Reducing Administrative Burdens in the EU Final Report,* https://ec.europa.eu/info/sites/info/files/action-programme-for-reducing-administrative-burdens-in-the-eu-final-report_dec2012_en.pdf (accessed on 18 January 2019).

Moreover, a whole-of-government regulatory policy, in which administrative simplification strategies is one its elements, should be the one leading to technology decisions, and not the other way around, while stressing the mutually reinforcing benefits of both regulatory and digital policies. The policy should establish the goals on burden

reduction and simplification; and based on them, the internal government processes and the formalities for business and citizens should be re-designed, streamlined and transformed leveraging the benefits of digital and other means, in which the oversight body supervises the implementation of the tasks. See Box 9 above for an example of a programme of burden reduction from the European Commission.

There are initial efforts on* ex post *evaluation of regulation in Argentina but a clear systematic policy on this regard has not been developed.

Decree 891/17 for Good Practices in Simplification establishes the obligation for line ministries and government agencies to use tools on *ex post* evaluation of regulation. They comprise the assessment of regulation in force and the evaluation of regulatory burdens to simplify existing rules. As with other regulatory quality tools, institutional mechanisms to promote and supervise their implementation have not been established yet.

A noteworthy early effort on *ex post* evaluation of regulation is the recent issuance of *Decree 27/2018 of De-bureaucratisation and Simplification*. Consultations were made inside the government with line ministries and agencies to identify legal provisions liable to be eliminated or reformed, with the aim of reducing red tape and improving the legal framework. It includes 197 measures of reform and simplification.

Decree 27/2018 of De-bureaucratisation and Simplification was replaced by *Law 27.444*. *Law 27.445* and *Law 27.446*, all called *Law of Simplification and De-bureaucratization for the Productive Development of the Nation* in order to make the legal changes permanent.

The evidence collected seems to indicate that many of the rules eliminated or changed were outdated provisions which were already in disuse, the so-called "deadwood". OECD country experiences show this kind of exercise to be a good starting point, from which more sophisticated undertakings can be built. Additionally, eliminating "deadwood" also serves a genuinely useful purpose, as it enables businesses and third parties to accurately navigate laws and regulations. If this kind of exercise is not undertaken, the stock of regulation can become clogged with obsolete and overlapping rules.

Beyond this exercise, no systematic efforts to evaluate current regulation were identified. See Box 10 for an example of systematic practices of *ex post* evaluation from Australia.

Box 10. *Ex post* reviews of regulation in Australia

Australia performs highly on practices of *ex post* evaluation of regulations among OECD member countries according to the 2018 OECD Regulatory Policy Outlook (OECD, 2018[1]). The Australian Office of Best Practice Regulation and the Productivity Commission are the bodies in charge of the promotion and revision of the evaluation of regulations once they have been implemented. The country uses three broad approaches to *ex post* reviews, based on the legal requirements and policy objectives of the regulation.

One of the reasons for evaluating existing regulations is to manage the regulatory stock. Regulations can become obsolete or require information no longer relevant for the authorities, creating additional administrative burdens for citizens and businesses. The three methodologies used for controlling the inventory of regulations include:

1. Regulator-based strategy: It assumes that the regulator can administer and improve the policies under its management.
2. Stock-flow linkage: It limits the number of regulations that can be introduced; examples include the one-in, x-out rule.
3. Red tape reduction targets: It reduces the administrative burdens generated by regulations.

Programmed reviews are mandatory evaluations of the regulation. They are established in legal instruments and define a period within which the regulation should be reviewed. The Australian government uses three approaches as part of the programmed reviews.

1. Sunset clauses: Define the lifespan of the regulation. After this period the regulation will lose its validity.
2. Post-implementation reviews: It evaluates the impact of the regulation once it has been implemented.
3. *Ex post* reviews required in new legislation: Clauses that define the circumstances under which the regulation can be evaluated.

Finally, some reviews take place as a need arises. These ad hoc or special reviews tend to have a broader scope, involve more stakeholders or focus on a specific sector.

1. Stocktakes of burdens on business: These reviews take into account the comments and feedback provided by businesses
2. Principle-based reviews: Use a screening mechanism, such as restrictions to competition, to assess regulations.
3. Benchmarking: Compares regulations across jurisdictions.
4. In-depth reviews: Analyse the impact of a regulation, or a group of regulations, on a specific sector or industry.

Source: OECD (2018[1]), *Review of International Regulatory Co-operation of Mexico*, https://doi.org/10.1787/9789264305748-en; Office of Best Practice Regulation (2016[17]), *Sunsetting Legislative Instruments*, https://www.pmc.gov.au/sites/default/files/publications/obpr-gn-16-sunsetting.pdf (accessed on 9 February 2019); Office of Best Practice Regulation (2017[18]), *Best Practice Regulation Report 2015-16*, http://www.pmc.gov.au/office-best-practice-regulation; Office of Best Practice Regulation (2016[19]), *Post-implementation Reviews*, https://www.pmc.gov.au/sites/default/files/publications/017_Post-implementation_reviews_2.pdf, (accessed on 9 February 2019).

Recommendations

- Establish in a policy document the definition of a formality for citizens and businesses.
- Ensure that the websites www.argentina.gob.arg and tramitesadistancia.gob.ar have consistent information, have all the information of formalities for citizens and businesses of the central government of Argentina, and for transparency, openness and informational purposes, they are the single source of information of formalities.

- Keep the registry of formalities updated by requiring ministries and agencies to inform the registry whenever new formalities are "born" or are eliminated, or when the data requirements in a formality change.
- Define and implement a comprehensive strategy of administrative simplification for citizens and business formalities, leveraging the experience collected so far as part of e-government and digital government efforts, in the achievements of the programme of "distance formalities" and in the experience of the Ministry of Production and Labour.
- The strategy should have targets in the reduction of administrative burdens for citizens and businesses and should establish priority sectors for the reduction, depending on the most complex regulatory areas for citizens and businesses, or the most irritating ones.
- The regulatory policy group should oversee the planning, development and implementation of the registry of formalities and of the administrative simplification strategy.
- Once a system of RIA is in place, Argentina should consider establishing periodic reviews of the stock of regulation similar to the one carried out with *Decree 27/2018 of De-bureaucratisation and Simplification*. For this purpose, guidelines and other supporting material should be issued to help government agencies to comply with the obligation of *ex post* evaluation of regulation. Consider establishing a prioritising strategy to focus the efforts on the most meaningful assessments.

The governance of regulators

Good regulatory outcomes depend on more than well-designed rules and regulations. Regulatory agencies are important actors in regulatory systems that are at the delivery end of the policy cycle. The OECD 2012 Recommendation recognises the role of regulatory agencies in providing greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence. This section addresses the governance arrangements in force in the Government of Argentina for economic regulatory agencies that have a degree of independence from the central government.

Assessment

Role clarity: The National Communications Agency (ENACOM) has a significant opportunity to establish regulatory activities as the priority in the new framework to be developed.

ENACOM is a rather new agency, but without an updated law due to the unification of the communications and broadcasting branches. In this situation, the agency is currently defining the rules while the new law emerges. Thus, it is a priority to issue the new law to define the policy objectives for ENACOM, in which the regulatory activity should be the main priority of the agency, and the avoidance of conflicting or competing objectives should be sought, such as the active promotion of new investments. See Box 11 for an example of objective definitions for the rail regulator from the United Kingdom.

Box 11. Objectives and prioritisation of functions at the Office of Rail and Road in the United Kingdom

The Office of Rail and Road (ORR) in the United Kingdom regulates the rail industry's health and safety performance and makes sure that the rail industry is competitive and fair. Besides, they have economic regulatory functions in relation to railways in Northern Ireland and for the northern half of the Channel Tunnel, situated in the United Kingdom. The long-term vision of the ORR is "…a partnership of Network Rail, operators, suppliers and funders working together to deliver a safe, high-performing, efficient and developing railway".

The enforcement powers of the ORR are established not only in country regulation but also in the European Union framework. The most important laws and rules guiding the activities of the ORR are the following:

- Railway Act (1993) for economic enforcement.
- Competition Act (1998) for competition enforcement.
- 2012/34/EU of the European Parliament and of the Council of 21 November 2012 for Powers and functions under European legislation.
- Enterprise Act 2002 for market studies and market investigation references.
- Consumer Rights Act 2015 and Part 8 of the Enterprise Act for consumer enforcement.

The ORR prioritises its activities in order to deliver the highest value of intervention. The strategic plan to achieve and prioritise its duties comprise:

- Strategic significance: how the intervention delivers outcomes and is aligned with the strategic objectives.
- Relevance and need of the ORR's act: if the ORR is the best institution to intervene in a specific situation.
- Impact: the likely impact derived from the ORR intervention is a relevant factor to consider. For instance, the ORR takes into account the actual and potential level of harm and damage, the evidence of systemic or isolated risks, the environment of the situation, the cost and prices of consumers, the deterrent effects or the potential benefits, etc.
- Costs: the internal and external costs of the intervention.
- Risks: the probability to achieve a successful outcome, the legal risks, the impact of intervention over credibility and reputation of ORR.

Source: Office of Rail and Road (2019[20]), *About ORR*, http://orr.gov.uk/about-orr (accessed on 9 February 2019).

Preventing undue influence and maintaining trust: regulators in Argentina undertake measures to reduce the risk of undue influence from the public, stakeholders and other public institutions. For instance, regulators rely on specific rules to limit "revolving doors" and they install public audiences to develop new regulations. These practices, however, could be strengthened with supplementary activities to promote and maintain trust, as economic regulators should aspire to have more comprehensive and stronger practices on transparency and accountability than the ones applied by line ministries for instance.

Regulators must work hand in hand with regulated entities, the general public, and need to co-ordinate with other public institutions to achieve their goals. A relevant challenge for regulators is to prevent undue influence in order to remain impartial and unbiased in their regulatory decisions.

Economic regulators in Argentina have developed fora and rules to communicate and engage with stakeholders on the process of regulatory decision making, which can help narrow the risk of undue influence. Regulators employ public audiences, users' commissions, consultation processes, and informational meetings with stakeholders, in which other participants can also be present. However, there is heterogeneity in the functioning of these practices, which can undermine the prevention of undue influence.

Also, the publication of regulatory planning agendas in which regulators announce the legal instruments intended to be revised or issued anew can contribute to promote transparency and participation, and limit spaces for regulatory capture.

Enhancing accountability and transparency are other measures to increase trust in regulators. In fact, larger degrees of independence of regulators must be accompanied with more responsibilities on transparency and accountability compared to other public entities.

Decision making and government body structure for independent regulators: government body structure of regulators varies across entities; from councils formed through a public contest to boards designed by presidential and congress appointment. These processes could be adjusted further to select the best-qualified candidates and reduce the risk of capture and undue influence.

Councils installed on regulatory bodies constitute a relevant practice, as they can strengthen the decision-making process and reduce the risk of regulatory capture. According to their specific laws, ENRE and National Gas Regulator (ENARGAS) have five five-year members appointed by presidential order, which are selected from a pool of candidates selected by public contest. Specifically, in the case of both ENRE and ENARGAS specific legal provisions indicate that the selection of candidates is done through public contest to select the best profiles. In contrast, the current law of the ENACOM indicates that the four members of the board will be appointed by the President and three by the National Congress, with no use of a public contest for the pool of candidates.

For several years, the requirement to select board members in ENRE and ENARGAS through public contest in these regulators was abandoned, and it was just reinstated just recently. Similar situations in the future can harm significantly the independence and undermine the performance of the regulators.

An area of improvement is to standardise the appointments procedure across regulators, which should be based on formal requirements on experience, education and other merits. Additionally, for the case of ENACOM, the elimination of political appointment can boost the degree of independence of the regulators.

In addition, limiting the length of service or the number of terms served can be a useful tool for forward planning and to enhance predictability. See Box 12 for an example of a governance model for the telecom regulator from Mexico.

Box 12. The governance model of the Federal Institute of Telecommunications of Mexico

The Federal Institute of Telecommunications (IFT) is a constitutional autonomous body of the federal government of Mexico. Among its duties is to regulate, promote and oversee the telecom sector in Mexico. The IFT has a board of commissioners for the decision-making process formed by seven commissioners, including the president. The IFT comprises an investigating authority, a research centre, units, general co-ordination offices, general directions and deputy general directions. All of them report directly or indirectly to the board of commissioners, with the exemption of the investigating authority, which has a degree of autonomy inside the institute.

The board of commissioners has the power to regulate the market, mediate between concessionaires, resolve controversies, etc. The president commissioner does not have the faculties for making decisions on its own; decision-making has to be through the board. The president commissioner is responsible for the communication with other government entities to assure the correct functioning of the Institute, among others.

The IFT through the investigating authority (IA) is responsible for conducting the investigations related to economic competition in the telecom sector. The IA has technical and operative autonomy, so it can decide its work. Therefore, the board does have neither power nor control over the IA.

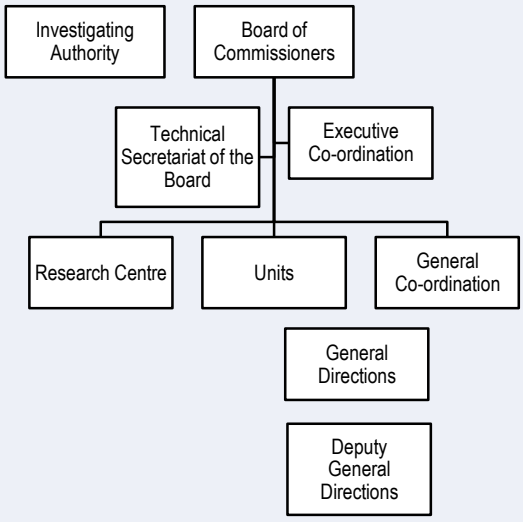
The IFT also has a research centre, which is the technical support of the board. It develops investigations, analysis and research related to the telecom sector. Moreover, it is also responsible for establishing the processes for *ex post* assessment of the regulation.

Appointing process for commissioners

The IFT has to follow a constitutional-defined process for appointing commissioners. In the first stage, the candidates must prove their experience and technical training, relevant for the sector and the appointment. The candidates' application is analysed by the evaluation committee, which is comprised of the heads of the Central Bank of Mexico, the National Institute for the Evaluation of Education and the National Institute of Statistics and Geography. Thereafter, the committee conducts a technical exam to those candidates that covered the initial requirements – the exam is reviewed at least by two universities.

The committee proposes between three and five candidates to the President of Mexico to select one of them. The president nominates the candidate to the Senate of the Republic, which must be endorsed by, at least, two-thirds of the chamber. If the senate does not approve the candidate, the president has to select another one from the committee's proposal and repeat the process with the senate. This process has to be repeated until a candidate is approved or until there is just one candidate left from the committee, in which case it will be directly appointed as commissioner.

Organisational structure of the IFT



Source: Instituto Federal de Telecomunicaciones (n.d.[21]), Estatuto Orgánico (Organic Statute), http://www.ift.org.mx/conocenos/estatuto-organico (accessed on 9 February 2019).

Accountability and transparency: economic regulators in Argentina are expected to comply with the same obligations on transparency as any public entity from the executive federal; they are accountable to the national trustee, the general audit office, and publish an annual and a five-year report. These are common practices, but transparency and accountability can be enhanced through formal hearings and the publication of result indicators.

Regulators in Argentina follow the same laws on transparency as all public entities. In regards to accountability, they are subjected to *Law 24.156 of Financial Administration and the Control Systems for the National Public Sector*; and for internal control to the General Audit Office. Economic regulators also prepare compulsory annual reports and a four-year statement on their main activities to the General Audit Office, which are made public. These practices are consistent with those of OECD countries.

Nevertheless, accountability could be strengthened by establishing formal reporting and hearing to the National Congress; currently, regulators are not obliged to be accountable to congress although they answer to their inquiries. Similarly, holding public fora to disseminate and make public the institutional goals can create confidence with the public.

Granting more independence to economic regulators can contribute to achieving the policy objectives; however, independence does not mean isolation. On the contrary, independence warrants stronger practices on transparency and accountability.

Engagement with stakeholders: communication between regulators and stakeholders is performed through public audiences, consultation processes and formal meetings under specific procedures. These practices can be complemented with annual agenda of planned regulatory actions, meetings and other fora and with formal participation of stakeholder representative.

Communication between regulators and stakeholders, which include the regulated entities, the general public and other institutions, is performed through public audiences, consultation processes in the development of regulations, and formal meetings. These practices have as legal basis specific rules, such as the rules for the elaboration of regulations with public participation, and the rules for the open meetings of regulatory agencies of utilities. These rules also establish specific protocols for the public consultation and the other forms of stakeholder engagement, which include publicity and public access to meetings and audiences.

As a complementary measure, regulators could consider the establishment of an annual agenda that creates formal and specific opportunities for engagement with the general public and the regulated entities. The agenda could provide information in advance to stakeholders, allowing them to plan how to react to the new regulatory proposal. At the same time, this agenda could socialise complex and controversial issues.

Funding: funding is one of the major strengths of the institutional design of regulators in Argentina. They receive a percentage-income fee directly from regulated entities. The resources are managed by the treasury, and regulators get such resources and are accountable for them. Some regulators, however, have faced some difficulties in the process to access financial resources from the treasury.

The ENRE and ENARGAS define their own budgets and collect resources from regulated entities through fixed percentages of income. The flow of resources goes first to the treasury accounts and the regulators have to request access to the funds.

Seemingly, over the last few years, regulators have faced some difficulties to get full control of such resources. One of the difficulties is that the income for regulators does not enter a specific purse in the treasury, and are managed as resources available for general purposes. To avoid this situation, such resources could be labelled and be directed to the regulators from the start.

ENACOM also collect resources from regulated entities following the same process as ENRE and ENARGAS, with one exception: the rates are already fixed and they receive funding according to the national budget.

The internal process and rules could be revised in order to reduce the administrative burdens ENRE and ENARGAS face when trying to access the funds. Additionally, there is no apparent reason to have a different financing scheme for ENACOM.

It is important to mention that financial resources must be aligned to the policy objectives and specific goals of the regulator, which is also an element of the role clarity. Moreover, the mechanism of funding for regulators must be linked to strong practices of accountability, transparency and performance tracking. See Box 13 for an example of funding arrangements for the transport regulator from Australia.

Box 13. Funding of the National Heavy Vehicle Regulator of Australia

The National Heavy Vehicle Regulator of Australia (NHVR) administrates a fund which resources can be used for:

- Expenses linked to the enforcement of the Heavy Vehicle National Law (HVNL).
- Payments authorised by the HVNL.

- Payments recommended by the regulator and approved by the responsible ministers.

The fund can raise money from different sources described in the HVNL as:

- Resources appropriated by the parliament for the purposes of the fund.
- All fees, charges, costs and expenses paid to or recovered by the regulator under the HVNL.
- The proceeds of the investment of money of the fund.
- Grants, gifts and donations made to the regulator.
- All money directed or authorised to be paid into the fund under the HVNL, any law of a participating jurisdiction or of the Commonwealth.
- Money or property received by the regulator in connection with the exercise of its functions.
- Money paid to the regulator for the provision of services to a state or territory.

Source: Queensland Legislation (2019[22]), *Heavy Vehicle National Law*, https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2012-hvnlq#sec.687 (accessed on 9 February 2019).

Performance evaluation: economic regulators in Argentina prepare and update indicators mainly on processes, general activities, and the budget and its execution. There is no evidence of elaboration of performance indicators focusing on the contribution of regulators over their policy objectives.

Economic regulators elaborate on a regular basis, reports of indicators on financial and budget matters. They also prepare and update some indicators on processes and activities under their responsibility.

It is important however to develop performance indicators directly linked to policy objectives stated in the law. By establishing these indicators, regulators could assess whether their activities are contributing to meet their policy purpose. See Box 14 for examples of measuring regulatory performance for energy regulators from Canada and the United Kingdom.

Box 14. Measuring organisational and policy performance: The National Energy Board's Departmental Results Framework (Canada) and OFGEM's Retail Market Review Framework (United Kingdom)

The National Energy Board's Departmental Results Framework

The National Energy Board (NEB) measures its effectiveness in delivering its mandate using a Departmental Results Framework (DRF). Within the DRF, the NEB links its core responsibilities with outcomes, to which it attaches indicators that seek to demonstrate its performance in delivering its mandate. The DRF provides information that the NEB uses to refine the approach that it takes to deliver its mandate over time.

The NEB has also established a Performance Measurement Evaluation Committee (PMEC). The PMEC, composed of senior NEB officials and its CEO, reviews the DRF and presents the results to the board quarterly. The DRF performance report for the third quarter of 2016 sets

out departmental results and indicators for a number of aggregate areas (for example, safety and environment oversight). For each of these sections, the DRF also sets out the NEB's programmes performance. For each of these programmes, the outcomes that the NEB is seeking to achieve are linked to a performance indicator and target. Additionally, the intent of the measure and the results and actions that the NEB proposed to undertake in light of its performance are also set out.

OFGEM's Retail Market Review Framework

The Office of Gas and Electricity Markets (OFGEM) commenced a review of the electricity retail market in 2010 due to concerns that there were barriers to effective consumer engagement including the complexity of tariff options, poor quality of information provided to consumers and low levels of trust in energy suppliers (OFGEM, 2015[23]). The retail market review (RMR) was finalised in August 2013, and as part of that review, OFGEM included a number of proposals to improve consumer engagement and competition in the electricity retail market.

OFGEM established an RMR evaluation framework to assess the effectiveness of its policies on consumer engagement and competition in the electricity market. OFGEM developed a theoretical framework setting out its expected outcomes of the policy and indicators to measure the impact. These outcomes and indicators were linked to three thematic areas of the reform: building trust, improving understanding and simplifying tariff choices. OFGEM's evaluation approach included a number of techniques to determine the impact of its policies on the market, including bespoke consumer research, a time series study, descriptive monitoring, holistic context (putting findings into context with wider market monitoring and assessment) and process assessment (understanding how third parties had implemented its reforms) (OECD, 2014[24]).

OFGEM intends to conduct annual surveys looking at the impact of these policies. So far, OFGEM has commissioned 2 surveys looking at the impact of its policies which cover 6 000 energy consumers. OFGEM's 2014 survey created a baseline of consumer attitudes and behaviour, while the 2015 survey looked at changes over time (TNS BRMB, 2015[25]).

Source: National Energy Board (2017[26]), *Performance Report, Q3 Report*; OFGEM (2015[23]), *Retail Market Review: A Proposed Way Forward*, https://www.ofgem.gov.uk/ofgempublications/85836/retailmarketreviewmonitoringandevaluatingtheimpactofthenewrules.pdf (accessed on 4 April 2017); OFGEM (2017[27]), *Retail Market Review*, https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/retail-marketreview (accessed on 4 April 2017); TNS BRMB (2015[25]), *Retail Market Review 2015 Survey Report*, https://www.ofgem.gov.uk/sites/default/files/docs/ofgem_rmr_survey_2015_report_published.pdf (accessed on 4 April 2017).

Recommendations

- Argentina should also seek that in the new legal framework of ENACOM the regulatory function is set as a priority.
- Argentina should consider preparing and issuing guidelines and other recommended practices to strengthen amongst regulators the practices aimed at preventing undue influence. This might include protocols for meeting and engaging with stakeholders, and practices to increase the accountability and transparency in the reporting of the contents and results of these meetings. These guidelines should go beyond the rules established in the *Bylaw of Public Hearings*, the *Bylaw for the Participatory Drafting of Standards* and the *Bylaw for Open Meetings of the Regulators of Public Services.*

- Argentina should aim at developing further the process to appoint members of the board of the regulators to align it closer to best international practices and establish it as a high-level legal instrument, such as law. The process may include standardised practices across regulators, staggered appointments with smaller service periods for members of the board, and a larger degree of independence in the selection method, amongst others.
- Argentina should seek to define more profoundly accountability and transparency practices for regulators. These practices might include systematic reporting and hearings to the National Congress, and holding public fora to disseminate and make public the institutional goals, progress reports and achievements.
- Argentinian regulators should aim at including in their operational plans their regulatory planning agendas and a corresponding programme that creates formal and specific opportunities for engagement with the general public in this process.
- Argentina should consider reviewing the internal rules and processes through which regulators have access to their funds, and simplify them wherever the opportunity arises.
- Beyond the preparation and publication of indicators on processes, general activities, and the budget and its execution, Argentinian regulators could improve the development and reporting of performance indicators directly linked to policy objectives, and establish systems for tracking their progress and for creating feedback loops to amend courses of actions if needed. These indicators should be built around defined strategic objectives and should help keep track of performance and results achieved in the delivery of the public services the operational plan should include the mechanisms that regulators plan to follow to have an impact on these performance indicators.
- Argentinian regulators should consider creating a regulators club as a working group with the objective to develop first drafts of policy documents and draft guidelines to address the recommendations included in this section. In this way, consensus can be reached across regulators on policy definitions, and horizontal and common practices could be implemented. In turn, the regulators club should consult and co-ordinate with the regulatory policy group and other relevant stakeholders to refine the policy documents, draft guidelines and seek the reforms needed.[8]

Multilevel regulatory governance

Exerting regulatory authority across different levels of government should be done jointly to attain national economic and social policy goals. In this sense, regulatory fragmentation at the international, national and subnational level can be cumbersome for citizens and impede economic development. Governments should support efforts to develop regulatory management capacity at all levels of government. This section analyses the policies and co-ordination mechanisms being implemented by the central government of Argentina to promote regulatory coherence with international, national and subnational regulation. It also looks at the policies embedded to support the implementation of regulatory policies by two local governments.

Assessment

Argentina has not yet developed a strategy to support the subnational levels of government to improve the quality of its regulation. Initiatives for co-ordination between the national and the subnational levels of government are carried out on a case by case scenario. An ambitious effort to support the digitisation of internal administrative procedures in subnational governments is in place.

Argentina is a federal republic where the national and the subnational levels of government have regulatory powers. The government of Argentina has so far based support to subnational governments on ad hoc and punctual vertical co-ordination mechanisms that aim at improving sectoral policies. In this sense, Argentina has established federal councils where the National Government and Provinces with a sectoral approach on issues like modernisation,[9] energy,[10] environment[11] or health[12] propose regulatory changes if appropriate. Furthermore, the national government has established programmes to support simplification, notably through the Federal Modernisation Council and the programme "País Digital" that aims at improving service delivery through digitisation.

Regulatory coherence acquires relevance in a country with regulatory fragmentation amongst the national government, the City of Buenos Aires, the 23 provinces and the local municipal level. Procedures and regulations depend on the location of the firm and on the sector, with little co-ordination between different levels of government. Besides acting as a barrier to investment and entrepreneurship, this can also enhance the scope for corruption. The natural complexity of these relationships allows for both gaps in policy design and burdensome regulatory overlaps. While there are some formal and informal ways of co-ordinating, these approaches remain punctual and destined for certain sectoral priorities without a strategy on improving the overall quality of regulation at the subnational level.

The subnational levels of government are starting to take steps to adopt regulatory management tools like assessing the impact of regulation or engaging with stakeholders for regulatory purposes. Additionally, administrative simplification, especially focused in digitisation, is being carried out as a means to improve and streamline the delivery of public services to citizens.

Provinces have the autonomy to structure how they exert regulatory powers based on their own constitutions; this includes the design, implementation and enforcement of regulation. Currently, good regulatory practices rely mostly on assessing the legality of regulation and digitising the administrative procedures; stakeholder engagement for rulemaking purposes, as well as *ex ante* or *ex post* impact assessments, are yet at the very initial stages of implementation. The latter may impact the capacities which affect both the design and the implementation of national and subnational regulation.

The two sample subnational governments – the City of Buenos Aires and Province of Buenos Aires – are engaged in mapping, and digitising, internal administrative procedures and formalities for citizens and businesses, with varying degrees. The digitisation efforts, done with the sole purpose of eradicating paper, might be the building block to improve the stock of regulation in force; however, they should be coupled with explicit administrative simplification and burden reduction strategies. For example, there is still room to streamline formalities, especially those related to obtaining licences and permits. The recently approved laws on entrepreneurship and SMEs aim at facilitating

firms' start-up by creating a new type of firm, which can be set up in one day which is a first step in the right direction.

On regulatory management tools, the City of Buenos Aires issued a joint resolution to adopt "Good Practices for the regulation and the promotion of the economic activity in the City of Buenos Aires", in which provision are set to issue further guidelines for the implementation of ex ante assessment of benefits and cost of draft regulation, system interoperability, regulatory simplification, stakeholders' engagement, amongst other. This is an encouraging step that should be followed up with the publications of guidelines and methodologies, actions for the capacity building for officials, an establishment of a mechanism for proper oversight.

Similarly, the Province of Buenos Aires published a resolution to introduce the regulatory impact assessment as part of the process to issue regulation. It also published guidelines and a template for this purpose. The challenge now is to make it operational for which generation of capacities for public officials will be needed. Although the RIA is currently optional for interested ministries and agencies, it can be seen as a "foot in the door" for a roll-out across the government, in which effective oversight will be needed.

The national government should support these endeavours to embed good regulatory practices in provinces and municipalities to implement national regulation but also to support subnational governments in defining their own regulatory practices given their proximity to citizens.

Recommendations

- Subnational governments in Argentina should continue seeking to establish policies and practices aimed at improving the quality of their regulation with the aim to become systematised and permanent (see Box 15 for an example of regulatory capacity at the subnational level from the UK). The should include:
    - Policies to further simplify formalities, which should have synergies with the well-embedded policies of digitalisation of administrative procedures in some regional governments; and to establish freely accessible online registries of formalities for citizens and businesses.
    - Policies to control the flow of new regulations, such as streamlined versions of *ex ante* assessment tools, which might include regulatory checklists.
    - Policies to review the stock of regulations, such as streamlined versions of *ex post* assessment, which might include principle-based reviews such as burden reduction programmes, or elimination of barriers on the competition.
    - Policies to systematically embed stakeholder engagement in the development and implementation of administrative simplification programmes, in the development of draft regulation as part of the process of *ex ante* assessment, and in the definition of priorities for *ex post* assessment, amongst others.
    - Also, proper oversight mechanisms to ensure effective implementation of these new policies and tools should be sought.
    - Programmes to enhance the capacity of public officials to apply them should be implemented.

Box 15. Regulatory capacity at the subnational level in the United Kingdom

In the United Kingdom, the Local Government Association (LGA) is the national representative body for all councils, funded from their subscriptions. It was set up in 1997 for local governments to have a bigger say at the national level and to secure greater responsibilities and resources for councils. The Local Authorities Co-ordinators of Regulatory Services (LACORS) was originally established in 1978, supporting and attempting to ensure uniform enforcement by the local authority trading standards departments. Since 1991 it has also expanded to cover food safety, gambling, civil registration and a number of other enforcement functions. It promotes good practice in local government regulatory and related services, by providing specialist advice and guidance to partner local initiatives and by promoting the local voice in national policy. It is funded by a combination of central and local government money, and is accountable to a board of directors and elected by the LGA and other local authority representative organisations.

Moreover, the Better Regulation Delivery Office (BRDO), created on 1 April 2012 as an independent unit within the Department of Business, Innovation and Skills (BIS) is the centrepiece of the government's current´s strategy to promote joined up better regulation between the different actors engaged at the local level.

Source: OECD (2010[28]), *Better Regulation in Europe: United Kingdom 2010, Better Regulation in Europe*, http://dx.doi.org/10.1787/9789264084490-en.

- The regulatory policy group should develop and implement governance arrangements coupled with incentives, to co-ordinate with and support subnational levels of government (see Box 16 for examples of co-ordination between national and subnational governments in regulatory policy from selected OECD countries). The objectives of such mechanisms should aim at supporting the local levels of government to define their own regulatory strategy mentioned above while helping implement the national objectives. These arrangements should be part of the reflection and issuance of the fully-fledged regulatory policy recommended at the beginning.
    - As part of these governance arrangements, the regulatory policy group could consider establishing incentives (fiscal or administrative) to promote the adoption of regulatory policies and tools by subnational governments.
    - Additionally, the national support should comprise capacity-building workshops coupled with guidelines and manuals to help improve the current and future capacities of public officials at subnational level.
    - The regulatory policy group should also become the main contact point between federal ministries and agencies on one hand, and subnational governments on the other, whenever there is a need for co-ordination between them to seek regulatory coherence, either when developing new national or local regulations, or when existing ones need to be amended.

Box 16. Examples of co-ordination between national and subnational governments to reduce administrative burdens: The case of Mexico, Portugal and Sweden

In **Mexico**, the National Agency of Better Regulation (CONAMER) provides training and advice on regulatory policies and tools to subnational governments. For example, CONAMER has led to the implementation of a simplification programme for start-up procedures (SARE). According to CONAMER, the turnaround time for the municipal start-up licence went down from 25.2 to 2.4 days in the municipalities that established SARE between March 2010 and November 2011.

In **Portugal**, the Simplex Programme helps municipalities in simplifying administrative procedures in areas where both the national and subnational governments are involved (licences, certificates, inspections). The programme is gradually integrating into a single catalogue all licences and prior authorisations which affect the activities of citizens and businesses. Also, it is consolidating municipal regulations through exchanges of best practices.

In **Sweden**, the Swedish Agency for Economic and Regional Growth-Tillväxtverket, a national government agency, has mapped the problems experienced by enterprises in their contacts with subnational authorities and possible solutions. Also, the Swedish Association of Local Governments (SALAR) is identifying unnecessary regulations issued at the national level which impact the local level. Moreover, SALAR is encouraging the standardisation of interpretation and enforcement of regulations at the subnational level.

Source: OECD (2014[29]), *Regulatory Policy in Mexico: Towards a Whole-of-government Perspective to Regulatory Improvement*, https://doi.org/10.1787/9789264203389-en; OECD (2010[30]), *Better Regulation in Europe: Portugal 2010*, https://doi.org/10.1787/9789264084575-en; OECD (2010[31]), *Better regulation in Europe: Sweden*, https://doi.org/10.1787/9789264087828-en.

Notes

[1] The exception is the Ministry of Production and Labour, which has the Productive Simplification Secretariat, who currently performs an *ex ante* assessment of draft regulation of only this ministry and oversees whether these regulations comply with *Decree 891/2017*.

[2] At the time of preparation of this report, *Decree 1070/2018* was issued. The decree established the creation of the Regulatory Policy Group, which includes representatives from the Legal and Technical Secretariat of the Presidency, Administrative Modernisation Secretariat, Chief of the Cabinet and the Productive Simplification Secretariat. This group is in charge of co-ordinating and promoting regulatory quality in the National Public Administration.

[3] On March 2018, *Decree 174/2018* was introduced. This instrument establishes that the Legal and Technical Secretariat must co-ordinate the implementation of good regulatory practices and develop mechanisms that improve the regulatory policy.

[4] http://www.mercosur.int/.

[5] At the time of preparation of this report, *Decree 1070/2018* was issued. The decree established the creation of the Regulatory Policy Group, which includes representatives from the Legal and Technical Secretariat of the Presidency, Administrative Modernisation Secretariat, Chief of the

Cabinet and the Productive Simplification Secretariat. This group is in charge of co-ordinating and promoting regulatory quality in the National Public Administration.

[6] During the preparation of this report, Argentina informed that the platform has been used for public consultation of several draft regulations, including the Bylaw of Access to Public Information, the Public Sector Ethics, among others.

[7] The Public Modernisation Secretariat reports that 1 244 formalities for citizens and business are hosted on the website tramitesadistancia.gob.ar.

[8] The first meeting of the Club of Regulators of Argentina took place on 5 November 2018. According to the Legal and Technical Secretariat, which co-ordinates the agenda of the club, representatives of ENRE, ENARGAS, ENACOM, CNRT, ANMAT, CNV, CNDC, SSS, ORSNA, ERAS, SSS, ORSNA and ERAS attended the meeting. Besides, officials from the Government Secretariat of Modernisation and the Productive Simplification Secretariat from the Ministry of Production and Labour did participate in the meeting. The launch of the club is an important step towards a collaborative work of regulators in Argentina, however its formalisation and publicity is desirable.

[9] https://www.argentina.gob.ar/cofemod.

[10] https://www.argentina.gob.ar/energiaymineria/cfe.

[11] http://www.cofema.gob.ar/.

[12] http://www.msal.gob.ar/index.php/component/content/article/45-cofesa/32-cofesa.

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Chapter 1. The context for regulatory policy in Argentina

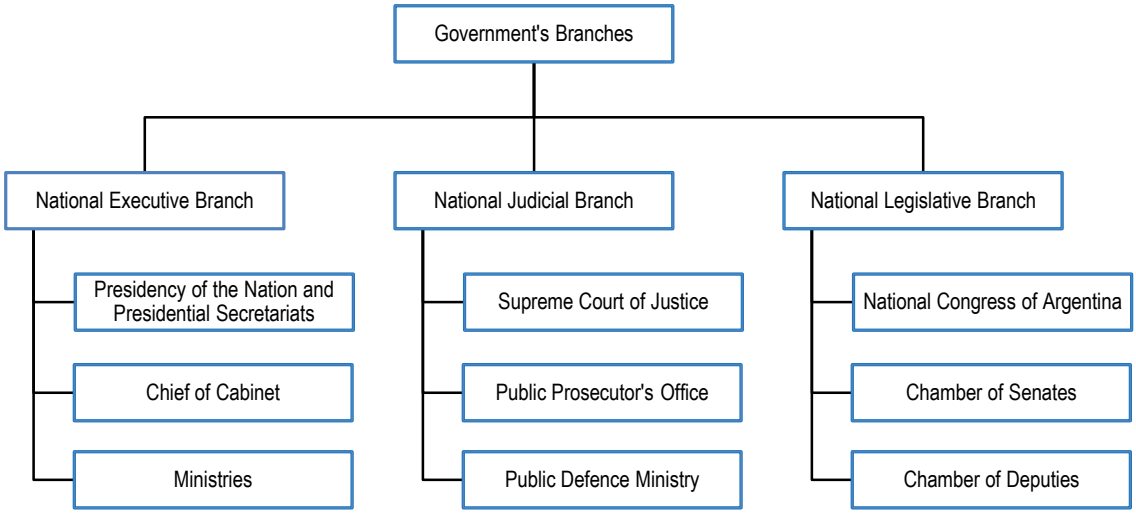
This chapter contains a description of the structure of the government of Argentina, which comprises the national and subnational levels. It also presents a brief description of the recent and current economic performance of Argentina, in which the inputs come mainly from the latest OECD Multi-dimensional Economic Survey of Argentina.

With a mainland area of 2.8 million km², the Argentine Republic (hereafter Argentina) is the 8th largest country in the world and second largest in Latin America. It is also the second largest economy in South America after Brazil and the third largest in Latin America. In recent years, Argentina has undertaken policy reforms with the objective to enhance economic performance and improve the living standards of citizens. In most cases, these reforms imply significant changes in economic management and in the institutional landscape and performance within the public policy making. Notwithstanding, opportunity areas remain to continue building and improving the institutional framework to achieve social and economic objectives and reduce the vulnerabilities and potential risks for the economic performance of Argentina.

Government structure in Argentina

Argentina is a federal state divided into 24 self-governed states – 23 provinces and the Autonomous City of Buenos Aires. At the national level, the powers of the republic are divided into the National Executive Power, the National Judicial Power, and the National Legislative Power (see Figure 1.1). The presidency of the nation, secretariats, chief of cabinet and ministries sit within the National Executive Power. The National Legislative Power holds both the Chambers of Deputies and the Chamber of Senators.

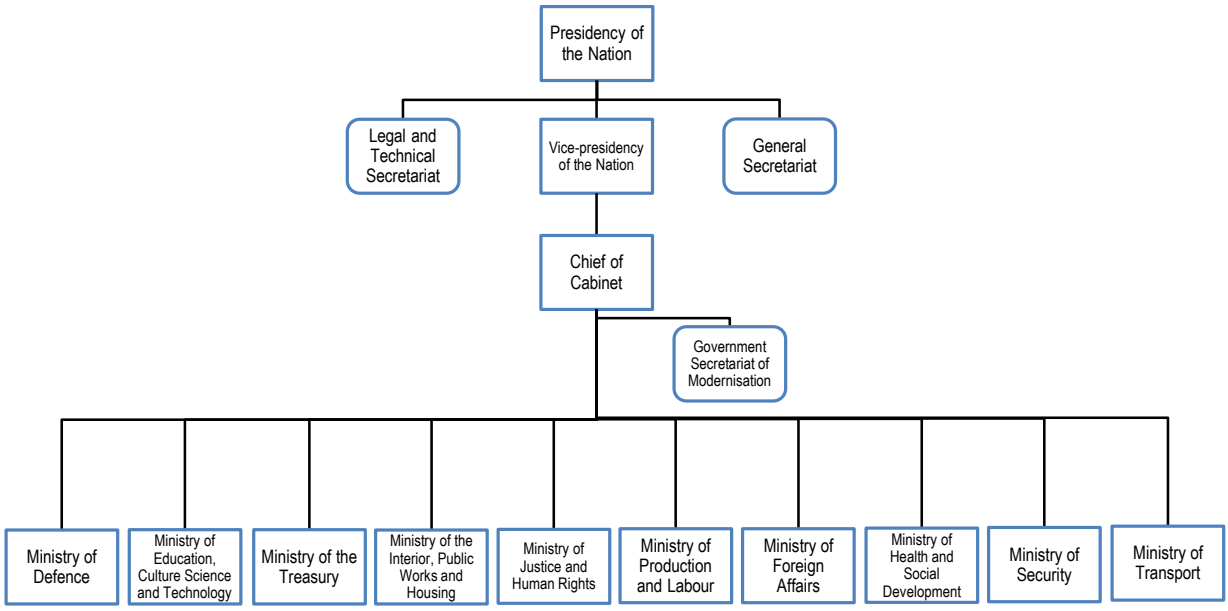
Figure 1.1. Branches of the Argentine Republic



Source: Adapted from Dirección Nacional de Diseño Organizacional (2019[1]), *Administración Pública Naiconal*, https://mapadelestado.jefatura.gob.ar/organigramas/autoridadesapn.pdf (accessed on 9 February 2019); and Dirección Nacional de Diseño Organizacional (2019[2]), *Administración Pública Nacional: Descentralizada y Entes del Sector Público Nacional*, https://mapadelestado.jefatura.gob.ar/organigramas/apndescentralizados.pdf (accessed on 9 February 2019).

The head of the National Executive Branch is the President of the Nation. In turn, the National Executive Branch is composed of 10 ministries and of 99 secretariats, some belonging to the Presidency of the Nation, the Chief of Cabinet and the rest to the ministries (see Figure 1.2 and Table 1.1.). The structure of the National Executive Branch was reformed in 2018 through *Decree 801/2018* and *Decree 802/2018*. The restructuring responded to the fiscal challenges facing Argentina and with the objective of improving decision making and policy delivery.

Figure 1.2. Structure of the National Executive Branch of Argentina



Source: Adapted from Dirección Nacional de Diseño Organizacional (2019[1]), *Administración Pública Naiconal*, https://mapadelestado.jefatura.gob.ar/organigramas/autoridadesapn.pdf (accessed on 9 February 2019); and Dirección Nacional de Diseño Organizacional (2019[2]), *Administración Pública Nacional: Descentralizada y Entes del Sector Público Nacional*, https://mapadelestado.jefatura.gob.ar/organigramas/apndescentralizados.pdf (accessed on 9 February 2019).

Table 1.1. Ministries and secretariats of the National Executive Power in Argentina

Ministry	Main secretariats per ministry
Ministry of Education, Culture, Science and Technology	- Government Secretariat of Science, Technology and Productive Innovation - Government Secretariat of Culture - University Policies Secretariat - Innovation and Educational Quality Secretariat - Educational Evaluation Secretariat - Educational Management Secretariat - Planning and Policies in Science, Technology and Productive Innovation Secretariat - Scientific and Technological Articulation Secretariat - Culture and Creativity Secretariat - Cultural Management Coordination Secretariat - Cultural Heritage Secretariat
Ministry of Defence	- Industrial Policy Research and Production for Defence Secretariat - Budgetary Management and Control Secretariat - Research, Industrial Policy and Production for Defence Secretariat - Strategy and Military Affairs Secretariat
Ministry of Energy and Mining	- Electric Energy Secretariat - Mining Secretariat - Hydrocarbons Resources Secretariat - Strategic Energy Planning Secretariat
Ministry of the Treasury	- Government Secretariat of Energy - Public Revenue Secretariat - Treasury Secretariat - Finance Secretariat - Economic Policy Secretariat

Ministry	Main secretariats per ministry
	- Legal and Administrative Secretariat - Energy Planning Secretariat - Non-Renewable Resources and Fuel Market Secretariat - Renewable Resources and Electricity Market Secretariat
Ministry of the Interior, Public Works and Housing	- Infrastructure and Water Policy Secretariat - Interior Secretariat - Territorial Planning and Coordination of Public Works Secretariat - Political and Institutional Affairs Secretariat - Housing Secretariat - Urban Infrastructure Secretariat - Coordination Secretariat - Territorial Planning and Coordination of Public Works Secretariat - Provinces and Municipalities Secretariat
Ministry of Justice and Human Rights	- Justice Secretariat - Human Rights and Cultural Pluralism Secretariat
Ministry of Production and Labour	- Government Secretariat of Agribusiness - Government Secretariat of Labour and Employment - Mining Policy Secretariat - Administrative Coordination Secretariat - Productive Integration Secretariat - Entrepreneurs and Small and Medium Enterprises Secretariat - Productive Simplification Secretariat - Industry Secretariat - Productive Transformation Secretariat - Mining Policy Secretariat - Internal Commerce Secretariat - Foreign Trade Secretariat - Food and Bio-economy Secretariat - Family Farming, Coordination and Territorial Development Secretariat - Agriculture, Livestock and Fisheries Secretariat - Labour Secretariat - Employment Secretariat - Citizen Services and Federal Services Secretariat - Promotion, Protection and Technological Change Secretariat - Administrative Coordination Secretariat
Ministry of Foreign Affairs	- Secretariat for Coordination and External Planning Secretariat - Worship Secretariat - International Economic Relations Secretariat - Foreign Affairs Secretariat
Ministry of Health and Social Development	- Government Secretariat of Health - Coverage and Health Resources Secretariat - Health Promotion, Prevention and Risk Control Secretariat - Secretariat for Health Regulation and Management Secretariat - Accompaniment and Social Protection Secretariat - Social Economy Secretariat - Social Security Secretariat - Socio-Urban integration Secretariat - Articulation of Social Policy Secretariat - Birth of Childhood, Adolescence and Family Secretariat
Ministry of Security	- Co-operation with Constitutional Powers Secretariat - Co-operation with the Judicial Branches, Public and Legislative Ministry Secretariat - Borders Secretariat - Internal Security Secretariat - Security Secretariat - Civil Protection Secretariat - Coordination, Planning and Training Secretariat - Federal Security Management Secretariat

Ministry	Main secretariats per ministry
	- Coordination, Training and Career Secretariat
Ministry of Transport	- Coordination, Training and Career Secretariat - Transport Works Secretariat - Transportation Planning Secretariat - Transportation Management Secretariat

Source: Adapted from Dirección Nacional de Diseño Organizacional (2019[1]), *Administración Pública Naiconal*, https://mapadelestado.jefatura.gob.ar/organigramas/autoridadesapn.pdf (accessed on 9 February 2019); and Dirección Nacional de Diseño Organizacional (2019[2]), *Administración Pública Nacional: Descentralizada y Entes del Sector Público Nacional*, https://mapadelestado.jefatura.gob.ar/organigramas/apndescentralizados.pdf (accessed on 9 February 2019).

At the national level, there are also decentralised regulatory agencies. Their competencies concentrate mainly in areas of sectoral and technical regulation and focus on regulating network industries and infrastructure, or regulating financial or human risks, amongst others. See Table 1.2 for a description of some of these agencies.

Table 1.2. Decentralised regulatory agencies of Argentina

Selected agencies

Agency	Role
National Communications Agency (ENACOM)	Its objective is to create stable market conditions to guarantee citizens' access to Internet, fixed and mobile telephone service, radio, postal and television services.
National Electricity Regulator (ENRE)	In charge of regulating the electrical activity and controlling that the companies of the sector (generators, transporters and distributors Edenor and Edesur) comply with the obligations established in the regulatory framework and in the concession contracts.
National Gas Regulator (ENARGAS)	It fulfils the functions of regulation, control, inspection and resolution of disputes related to the public transport and gas distribution service.
National Securities Commission (CNV)	The National Commission of Capital Markets is in charge of the promotion, supervision and control of capital markets. It is an autocratic entity assigned to the Ministry of Public Finance of Argentina.

At subnational level, in Argentina, in contrast to other federative countries, each state holds the powers that were not delegated to the federal government, as provinces are prior to the national state. Besides, the states are divided into administrative units which in the case of the City of Buenos Aires these are named *communities*; in the provinces, these are the departments and the municipalities. All these government levels produce regulation according to their own competencies.

For instance, the municipalities may produce regulation for the use of public areas, the control of public shows, the provision of public services, the promotion of tourism, etc. Chapter 6 contains further discussion of the division of regulatory powers in Argentina.

The provincial government is divided between the executive power (headed by the governor), the local congress and the judiciary authority. As mentioned above, the provincial government holds not delegated powers to the national state; for instance, they

have competency in the health and educational systems – in Mexico for example, these are delegated to the federal government. Besides, provinces regulate their municipalities.

A supreme court, the appeal chambers and the inferior courts, composes the judiciary power of provinces. These tribunals have competency in civil, commercial, labour and penal affairs.

Provincial congresses, on the other hand, have competencies in all the subjects not delegated to the national state. These congresses may be unicameral or bicameral, depending on the province.

Recent reforms and current economic performance of Argentina

Argentina is pushing to emerge from a series in economic disturbances and crisis (see Box 1.1). According to OECD (2017[3]), the new government elected in November 2015 inherited an economy at risk of suffering another severe crisis but set out to correct the various imbalances. These reforms helped stabilise the economy in the short term and rekindle inclusive growth. The main structural reforms undertaken include:

- Currency controls were abolished.
- Export taxes were eliminated except for soybeans, for which they are being phased out.
- The scope of application of the cumbersome system of import licensing was significantly reduced.
- An agreement with holdout creditors from the 2001 debt default restored access to international capital markets in 2016.
- National statistics were completely overhauled.
- Multi-year fiscal targets were announced.
- Large and untargeted subsidies have been curtailed substantially and are being phased out.
- Social benefits, including child benefits, unemployment benefits and pensions, were expanded.
- A new capital markets law to develop financial markets and improve corporate governance was submitted to congress.
- A large infrastructure investment plan with a focus on the northern provinces was put in place.
- A tax amnesty programme led to the declaration of almost 20% of gross domestic product (GDP) in previously undeclared assets held by residents and raised extraordinary tax revenues of 1.6% of GDP.

The Multi-dimensional Economic Survey of Argentina (OECD, 2017[3]) reported that in 2016, the country experienced a 5-year real growth of -0.2% on average. Furthermore, the World Bank reported that in 2017, the country experienced a growth pace of 2.9%, but at the beginning of 2018, Argentina faced new financial turbulences such that in the second quarterly, the economy started to slow down (World Bank, 2018[4]).

The Multi-dimensional Economic Survey of Argentina (OECD, 2017[3]) also reported that the exchange rate was ARS/USD 14.751 in 2016. By the end of 2018 however, the US dollar doubled the value of the Argentinian peso, reflecting the external pressures over the economy (OECD, 2018[5]). Notwithstanding the effects over the Argentinian peso, the abolishment of the exchange rate policy controls during 2015 meant a step in the right direction.

Box 1.1. A glance at Argentina's economic history

Argentina's per capita incomes were among the top ten in the world a century ago, when they were 92% of the average of the 16 richest economies (Bolt and van Zanden, 2014[6]). Today, per capita incomes are 43% of those same 16 rich economies. Food exports were initially the basis for Argentina's high incomes, but foreign demand plummeted during the Great Depression and the associated fall in customs revenues was at the root of the first in a long row of fiscal crises. The economy became more inward-focused as of 1930 when the country suffered the first of 6 military coups during the 20th century.

This inward focus continued after World War II, as policies featured import substitution to develop industry at the expense of agriculture, nationalisations and large state enterprises, the rising power of unions and tight regulation of the economy. The combination of trade protection and a significant state-owned sector lessened somewhat in the mid-1950s, in a succession of brief military and civilian governments.

However, the weakness of both the external and fiscal balances continued into the 1960s and early 1970s, leading to unstable growth performance and bouts of inflation, including the first hyperinflation in 1975. The military dictatorship of the 1970s and the democratic government of the 1980s continued to struggle with fiscal crises, resulting from spending ambitions exceeding revenues and exacerbated by the Latin American debt crisis starting in 1982, and the lack of a competitive export sector after decades of import-substituting industrialisation. The country fell into fully-fledged hyperinflation in 1989-90. Between 1970 and 1990, real per capita incomes fell by over 20%.

While the economy returned to growth after 1990 in the context of lower import tariffs, foreign investment, a currency pegged to the US dollar and falling inflation, volatility did not recede. Export competitiveness faltered following the Asian crisis and the devaluation of the Brazilian Real and by the late 1990s, the economy was facing a severe recession. Rising fiscal imbalances led to the 2001 debt default and the end of the currency peg. The impoverishing effect of the crisis was exacerbated by the subsequent devaluation which wiped out large amounts of household savings. Despite the recurrent crises, the growth performance of Argentina between 1990 and 2010 allowed it to begin a process of convergence with the developed world.

Source: OECD (2017[3]), *OECD Economic Surveys: Argentina 2017: Multi-dimensional Economic Survey*, http://dx.doi.org/10.1787/eco_surveys-arg-2017-en.

Main economic indicators as interest rates, fiscal deficit, unemployment rates, foreign investment, etc. have struggled to reflect better performances in the last years. Each of them is challenged by international pressures and economic performance as a whole. In most of them, however, additional to the international shocks, the quality of internal regulation plays a relevant role in the status quo.

For example, the Multi-dimensional Economic Survey of 2017 (OECD, 2017[3]) pointed out that protecting workers with training and unemployment insurance rather than strict regulations was a more effective labour market policy. Empirical evidence in Argentina suggests that more decentralised bargaining at the firm level would increase productivity by reducing stiffness and being more effective in response to market changes.

On the other hand, tax collection in Argentina still holds a complicated and inefficient system, hampering productivity and incentives for investment. For example, unlike the VAT, the *provincial turnover tax*, which is levied in all stages of the supply chain, creates distorted incentives to vertical integration (as there is no deduction in the early stages) and build barriers to entry between provinces (as different taxes are applied according to the origin of the goods). The financial transaction tax creates another distortion in the financial system, as it is levied on bank transactions with checks and savings accounts. Thus, it incentivises cash payments and delays financial inclusion (OECD, 2017[3]).

The integration of Argentina in the global economy is still low, as international trade accounted in average less than 30% of the GDP from 2010 to 2016. From the side of the imports, it reduces the competition in the local economy and from the exports; it limits the benefits from market expansion as job creation, foreign currency inflows and local currency strength. In this context, 35% of export taxes were a barrier to trade, increased labour unit costs and creates administrative burdens. Besides, Argentina reported that reducing import tariffs may bring not only a reduction in the administrative burdens but an increase in the exports due to more competitive prices (OECD, 2017[3]).

Trade dynamics can be improved through facilitation measures as they can potentially reduce administrative burdens and eliminates barriers to entry. For instance, simplifications on border controls and customs, harmonisation of single electronic documents and consolidation of information can promote international trade and impact on key indicators as interest rates and foreign exchange levels – the single window for international trade or *Ventanilla Única de Comercio Exterior* (VUCE) is an example of this strategy.

Foreign direct investment (FDI) inflows as a percentage of the GDP are low in comparison with OECD countries and top Latin American economies as Brazil, Chile and Mexico. Is well documented that FDI can promote productivity through technology transfer, improvement of supply chains or better practices in management. The attraction of FDI however, requires addressing challenges related to infrastructure, human capital development and the reduction in the limits to foreign investments, between other relevant reforms (OECD, 2017[3]).

These are some examples of the challenges that the current economy of Argentina faces which policy reforms can help address. A key factor however to develop policy reforms is to have in place a sound regulatory policy. The policy to ensure quality in the regulatory framework has the potential to issue and enforce rules which meet policy objectives, such as protection of consumers and the environment, boost productivity and promote inclusive growth while avoiding burdensome government processes for citizens and businesses.

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Chapter 2. Policies and institutions for regulatory policy in Argentina

This chapter discusses the current legal and institutional arrangement of the Government of Argentina to pursue a regulatory policy, including any policy statements and programmes that help implement the policy of regulatory quality. It also describes the policies and practices followed by Argentina to implement international regulatory co-operation.

Preliminaries

Regulatory quality and regulatory policy

Regulations can have a positive or negative impact on the performance of an economic sector or an economy. A specific regulation can open or close markets, can promote the elimination or creation of monopolies, can produce entry barriers, or can reduce or boost the incentives for innovation or entrepreneurship. Hence, it is important to review and improve the process followed to issue, implement and assess regulations, to ensure that they are "fit for purpose", they effectively address the underlying policy problem them, the benefits for society generated by regulations outweigh the cost and their goals contribute to social welfare and inclusive growth. In other words, it is important for governments to pursue a policy that promotes regulatory quality (see Box 2.1).

Box 2.1. What is regulatory quality?

Pursuing "regulatory quality" is about enhancing the performance, cost-effectiveness, and legal quality of regulations and administrative formalities. First, the notion of regulatory quality covers processes, i.e. the way regulations are developed and enforced. These processes should be in line with the principles of consultation, transparency, accountability and evidence. Second, the notion of regulatory quality also covers outcomes, i.e. whether regulations are effective, efficient, coherent and simple. In practice, this means that laws and regulations should:

1. Serve clearly identified policy goals and are effective in achieving those goals.
2. Be clear, simple and practical for users.
3. Have a sound legal and empirical basis.
4. Be consistent with other regulations and policies.
5. Produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account.
6. Be implemented in a fair, transparent and proportionate way.
7. Minimise costs and market distortions.
8. Promote innovation through market incentives and goal-based approaches.
9. Be compatible as far as possible with competition, trade and investment facilitating.

Source: OECD (2015[1]), *OECD Regulatory Policy Outlook 2015*, http://dx.doi.org/10.1787/9789264238770-en; O ECD (1995[2]), *OECD Recommendation on Improving the Quality of Government Regulation*, https://legalinstruments.oecd.org/en/instruments/128 (accessed on 9 February 2019).

The objective of regulatory policy is to ensure regulatory quality. Regulatory policy addresses the permanent need to ensure that regulations and regulatory frameworks are justified, of good quality and "fit for purpose". As an integral part of effective public governance, regulatory policy helps to shape the relationship between the state, citizens and businesses. An effective regulatory policy supports economic development as well as the rule of law, helping policymakers to reach informed decisions about what to regulate,

whom to regulate, and how to regulate. It has a social as well as an economic dimension. Evaluation of regulatory outcomes informs policymakers of successes, failures and the need for change or adjustment to regulation so that it continues to offer effective support for public policy goals (OECD, 2011[3]).

Both OECD and non-OECD countries have acknowledged the importance of regulatory policy. These recognitions led OECD countries to the development of the *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2015[1]) (see Box 2.2).

Box 2.2. Recommendation of the Council on Regulatory Policy and Governance

The recommendation sets out the measures that governments can and should take to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society. These measures are integrated into a comprehensive policy cycle in which regulations are designed, assessed and evaluated *ex ante* and *ex post*, revised and enforced at all levels of government, supported by appropriate institutions.

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.
2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including on line) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. Integrate regulatory impact assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.
5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost-effective and consistent, and deliver the intended policy objectives.

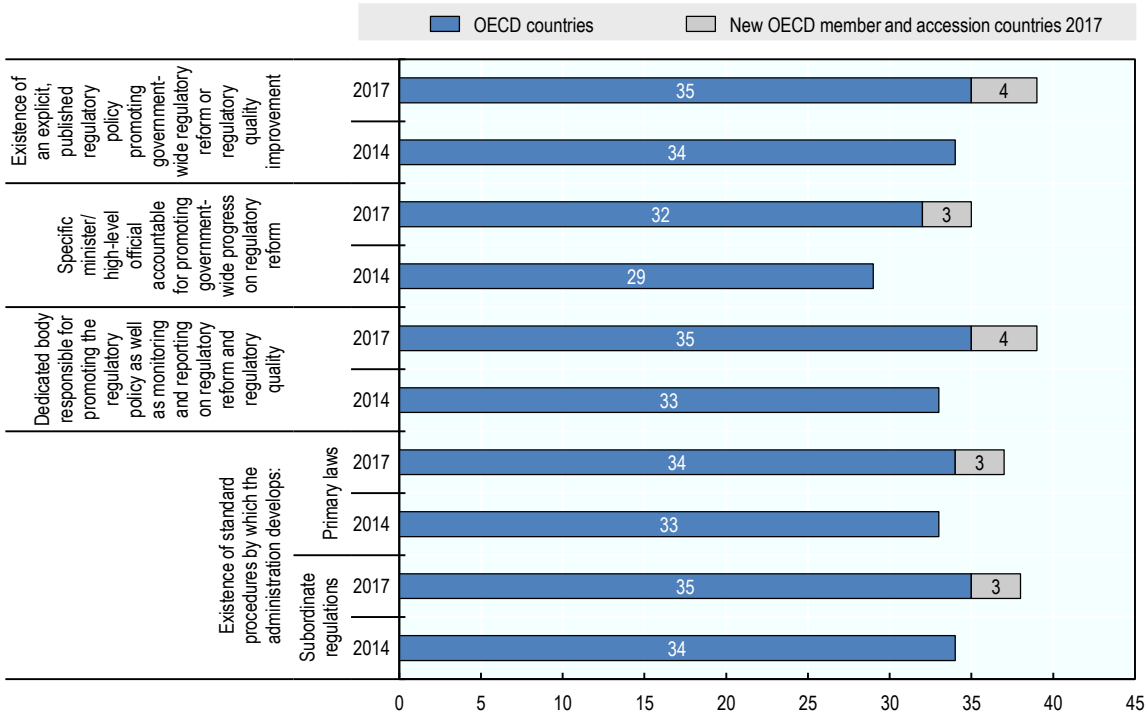
6. Regularly publish reports on the performance of regulatory policy and reform programmes, and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices, and reviews of existing regulations are functioning in practice.
7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate, apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. Where appropriate, promote regulatory coherence through co-ordination mechanisms between the supranational, the national, and subnational levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
11. Foster the development of regulatory management capacity and performance at subnational levels of government.
12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

Source: OECD (2012[4]), *Recommendation of the Council on Regulatory Policy and Governance*, http://dx.doi.org/101787/9789264209022-en.

Policies and institutions for regulatory policy: Evidence from OECD and accession countries

For regulatory policy to take hold, governments need to adopt and develop the policy principles of regulatory quality within their own national legislative framework. Indeed, recognising this need, OECD countries have demonstrated a strong in-principle commitment to regulatory management via the widespread publication of regulatory policy documents. According to the latest flagship publication *OECD Regulatory Policy Outlook 2018,* OECD and accession countries[1] continue to invest in their whole-of-government approach to regulatory quality (Figure 2.1). The vast majority of them have adopted an explicit regulatory policy promoting government-wide regulatory reform or regulatory quality (OECD, 2018[5]).

Figure 2.1. Whole-of-government approach for regulatory quality



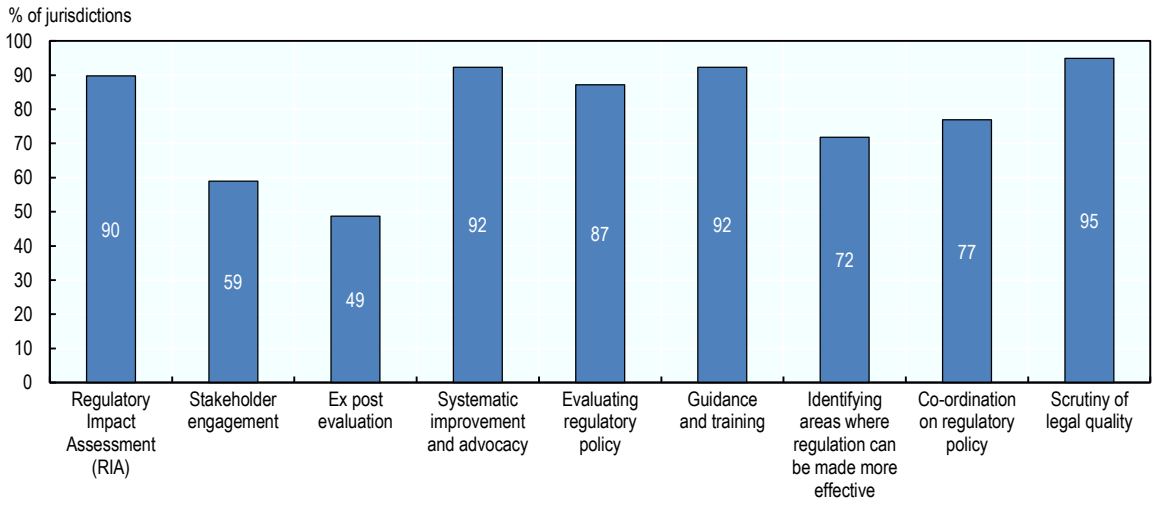
Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 include Colombia, Costa Rica, Latvia and Lithuania.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, in OECD (2018[5]), *OECD Regulatory Policy Outlook 2018*, http://dx.doi.org/10.1787/9789264303072-en.

Additional to have an explicit policy on regulatory quality, Principle 3 of the 2012 Recommendation calls for countries to "establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality". The 2012 Recommendation outlines a wide range of institutional oversight functions and tasks to promote high-quality, evidence-based decision making and enhance the impact of regulatory policy. These tasks and functions include: quality control; examining the potential for regulation to be more effective; contributing to the systematic improvement of the application of regulatory policy; co-ordination; training and guidance; and strategies for improving regulatory performance (OECD, 2018[5]).

These functions need not be carried out by a single institution/body. De facto, countries have reported a wealth of organisations responsible for the variety of oversight functions provided for in the 2012 Recommendation at different locations. The flagship publication *OECD Regulatory Policy Outlook 2018* shows clear signs that countries invest in regulatory oversight in line with Principle 3 of the 2012 Recommendation (OECD, 2018[5]) (see Figure 2.2). Figure 2.2 shows that all jurisdictions covered reported to have bodies in place that cover at least one of the regulatory oversight functions identified in the 2012 Recommendation. In particular, virtually all countries have in place a body responsible for RIA quality control. Quality control of stakeholder engagement and *ex post* evaluation, while not uncommon, is less widespread (59% of bodies report having a body responsible for scrutinising stakeholder engagement, and less than half of all

jurisdictions have a body responsible for the quality control of *ex post* evaluation). Similarly, only about three-quarters of countries have established a body responsible for identifying areas where regulation can be made more effective, and for co-ordinating regulatory policy (Figure 2.2).

Figure 2.2. Coverage of regulatory oversight functions in countries



Note: This figure is based on information available for all OECD countries, as well as Colombia, Costa Rica, Lithuania and the European Union.
Source: Survey questions on regulatory oversight bodies; Indicators of Regulatory Policy and Governance Survey 2017, in OECD (2018[5]), *OECD Regulatory Policy Outlook 2018*, http://dx.doi.org/10.1787/9789264303072-en.

The rest of the chapter discusses the current legal and institutional arrangement of the Government of Argentina to pursue a regulatory policy, including any policy statements and programmes that help implement the policy of regulatory quality.

Legal instruments to promote and implement regulatory policy in Argentina

This section identifies the main legal instruments of the national government of Argentina that establish provisions and elements consistent with regulatory policy. It provides a brief description of each instrument, as a deeper discussion of most of the instruments is included in the thematic chapters. A more comprehensive list of legal instruments related to regulatory policy in Argentina can be found in Annex 2.A.

Constitution of Argentina

The Constitution of Argentina establishes the nature of the national government of Argentina, being a federal republican representative. It also establishes the form in which the country should be administrated, foreseeing the division of powers in legislative, executive and judicial, noting their functions, conformation and faculties. The legislative branch is composed of two chambers, of Deputies of the Nation and of Senators of the provinces and of the city of Buenos Aires. The executive branch will be represented by the President of the Argentine Nation. The judicial branch is represented by the Supreme Court of Justice and by the other lower courts. Likewise, the constitution establishes the

different levels of government: federation, provinces and municipalities. As supreme law, the constitution also establishes fundamental rights.

Administrative Procedures Law

Law No. 19.549 of Administrative Procedures rules the processes that must follow the centralised and decentralised national administration, with the exemption of military organisations, defence and security. For instance, the law defines the general guidelines of the administrative acts, as the periods of procedures, the expiration dates and its exceptions; establishes the requirement of the administrative acts; and the judicial impugnation process.

A relevant statement of the law is the declaration of the principles of the government formalities. These are celerity, economy, simplicity and efficacy.

Law of Right to Access Public Information

Law No. 27.275 of Rights to Access Public Information has the objective to guarantee access to public information, promote the citizens' participation and the transparency of the public administration. The foundations of the law rely on the principles of publicity, transparency and maximum disclosure, maximum access, opening, dissociation, no discrimination, maximum haste, free of charge access, control, responsibility, limited exemptions, easement and good faith.

Thus, the law considers public all the information obtained, generated, transformed, controlled or retained by the central public administration and decentralised bodies, the legislative power, the judiciary power, the Ministry of Fiscal Affairs, the Ministry of Defence, the Council of the Magistrate, the state firms, concession holders of public services, unions, politic parties, etc.

In order to assure the implementation of the objectives and principles of the law, it created the Agency of Public Information Access, as a self-governed body with operational independence within the range of the national executive power.

The law also defines the communication channels and procedures with public intuitions to request information or summit complains.

Law of Digital Signature

The objective of *Law No. 25.506 of Digital Signature* is a formal recognition and promotion of the usage of the digital and electronic signature, as well as the recognition of its legal efficacy. The law makes a reference to the electronic certificates, which are documents electronically signed by a certifier.

The law also provides the institutional framework of the digital signature policy and the bodies with attributions, responsibilities and rights granted in the law, as the Chief of Cabinet, which is the authority in the application of the law. The Advisory Commission of the Digital Signature Infrastructure is the body in charge of providing recommendations about technological standards, a system to register the digital certificates, the storage of the information, amongst others. The licence certifier, on the other hand, is the issuer of digital certificates.

Decree of Good Practices in Simplification

The Government of Argentina published *Decree 891/2017 of Good Practices in Simplification*, as a first effort in promoting a cross-sectional basis of tools for administrative simplification within the public administration. The decree recognises the necessity to develop practices in simplification to reduce burdens, improve the efficiency and upgrade the quality in the government services. The decree includes general provisions for practices in simplification and other regulatory management tools such as the continuous improvement of processes, the evaluation of the implementation of rules, citizens' participation, digital government, cost-benefit analysis, silent-is-consent rule, the creation of registries and the efficient communication within public entities.

The decree is mainly a declaration of the need to implement regulatory management tools within the government, but their application and oversight are not spelled out. The decree makes a short description of the tools without developing them or providing guidelines for their application.

Decree De-bureaucratisation and Simplification

Decree 27/2018 of De-bureaucratisation and Simplification of formalities was issued with the aim to abrogate and substitute specific articles of regulations and norms in Argentina. The aim was that the government could provide an efficient and quicker response to citizens and firms' demands.

The range of modifications in the decree comprise societies, ports, energy, agro-industry, credit access, consumer rights, transport, intellectual property, electronic administration of documents, job promotion, state-assets administration, art, amongst others.

This instrument was issued as an urgency decree through an executive order that needed to be ratified by National Congress. As a response, congress published 3 laws in substitution of the decree in 2018: *Law 27.444 of Simplification and De-bureaucratization for the Productive Development of the Nation*, *Law 27.445 of Simplification and De-bureaucratization for the Development of Infrastructure* and *Law 27.446 of Simplification and De-bureaucratization of the National Public Administration*.

Guidelines for the Drafting and Production of Administrative Documents

The Guidelines for Drafting and Production of Administrative Documents were published in *Decree 336/2017*. These brief guidelines focus mainly on the format that public documents should adopt. For instance, they provide some indications about styling when quoting public buildings or properties, names of public officials and institutions, etc. The guidelines include directions for formalities, messages for law projects, administrative acts, amongst others.

Modernisation of the State Plan

The President of Argentina approved and published the modernisation plan of the central administration, the decentralised bodies, the self-governed organisations and the firms and societies of the state in *Decree 434/2016*.

The objective of the plan is to build a public administration oriented towards citizens' service and according to the principles of efficiency, efficacy and quality. The objective of the modernisation plan arises from the design of flexible public organisations that focus on results.

The plan has five branches:

- Technology and digital government.
- Integral administration of human resources.
- Results oriented administration and public commitments.
- Open government and public innovation.
- Digital-country strategy.

The co-ordination of all the actions originated in the plan relies on the Chief of Cabinet of the Government Secretariat of Modernisation (former Ministry of Modernisation), who must execute all the actions created from the plan and promote them in provincial and municipal governments, as well as in the City of Buenos Aires. Besides, the Government Secretariat of Modernisation must elaborate the documents related to the implementation of, the procedures guidelines for its instrumentation of the plan, promote the plan and launch training programmes related to such duties.

This plan provided the overarching policy for the e-government objective of a paperless government, in which all government processes are based on information and communications technology (ICT) tools. This policy benefited citizens and business through the reduction of administrative burdens by allowing them to submit or receive information on permits and licenses to the government.

From this plan, other legal instruments were issued in order to introduce a system of electronic management of files (through *Decree 561/2016*), or implement remotely conducted administrative procedures (*Decree 1063/2016*, and *Decree 733/2018*). These and other instruments related to the e-government policy of Argentina are discussed in Chapter 4.

Decree No. 894/2017 of Approval of the Administrative Procedures Bylaw

The Argentinian government updated the *Decree of Administrative Procedures* in November 2017. Given that the Administrative Procedures Law dates from 1972, it does not include many of the technological advances of recent years; especially it does not take into account all the digitisation efforts of the federal government in the last two years.

The new instrument includes the use of ICT tools in the public administration and requires centralised and decentralised entities of the public administration to use digital files through the System of Electronic Management of Files. It also encourages ministers, secretaries and heads of decentralised bodies to promote the use of this system by the institutions, entities and organisations below them in the administrative hierarchy.

Decree 1.172/2003 of Access to Public Information, which contains the Bylaw of Public Hearings

Public hearings are one of the most common ways of involving stakeholders in the regulatory process. The decree establishes the rules that must be followed by the organisations, entities, enterprises and institutions that belong to the executive branch of the government. It includes a description of the characteristics that should be taken into account in a public hearing as well as the scope of the comments and opinions submitted by stakeholders. Moreover, the decree specifies the capacities and obligations of the

president of the audience and goes over the legal requirements that the organising institution must comply with each stage of the hearing.

Decree 1.172/2003 of Access to Public Information, which contains the Bylaw for the Participative Drafting of Standards

The decree also includes the *Bylaw for the Participatory Elaboration of Regulations*. This instrument enhances public participation in the elaboration of rules that the executive branch of the government submits to the legislative branch. It is worth mentioning that, as in the case of public hearings, the comments and opinions submitted by stakeholders, either formally or informally (through mail), are not binding. If the institution carrying out the consultation includes opinions or proposals form the stakeholders in the final draft of the regulation, it must register them in the file of the consultation.

Decree 1.172/2003 of Access to Public Information, which contains the Bylaw of Open Meetings of the Regulators of Public Services

The decree refers to the open meetings that regulators of public services must hold. As in the bylaws described previously, the one on open meetings specifies the requirements, participants and procedures that must be followed to ensure a valid consultation. It also describes three kinds of meetings besides the standard ones; urgent meetings, secret meetings and null meetings. These meetings are particularly important for economic regulators as they are subject to sudden changes in the economic environment or manage sensitive information.

Main government agencies to promote and implement regulatory policy in Argentina

This section describes the main government agencies whose responsibility it is to promote and implement policies aimed at implementing and promoting regulatory quality in the national government of Argentina. In Annex 2.B, an attempt is made to include a more comprehensive list of government institutions which have relation to regulatory policy in Argentina.

Legal and Technical Secretariat of the Presidency

The Legal and Technical Secretariat of the Presidency (SLyT) sits at the centre of the government. According to *Decree 78/2000*, one of its main functions is to perform the legal scrutiny of all draft primary laws and subordinate regulations that require the sign off by the President or the Chief of Cabinet. This includes the laws pre-approved by both the chamber of deputies and senators of the Congress of Argentina.

The SLyT performs a gatekeeping role because it has the power to return or modify the legal instruments that are not consistent with the current legal framework. However, this role is formally restricted only to the draft instruments to be signed by the President or the Chief of Cabinet.

Once legislation or regulation is officially in force, if requested by senior officials, the SLyT is also in charge of drafting the corresponding subordinate decrees or other legal instruments.

Other relevant functions performed by SLyT include:

- Provide legal advice in cases in which the Chief of Cabinet, or any other agency of the Presidency of Argentina without legal support, has to be involved according to the legal framework.
- Assess draft regulation or prepare draft legal texts, when requested by agencies of the public administration.

In the latter case, the SLyT is regularly consulted by other agencies, but by no means the SLyT reviews all the flow of regulation issued by the public administration of Argentina. In these cases, the opinion of the SLyT is non-binding; although in practice, ministries and agencies who request the advice and support of the SLyT seldom deviate from the guidance received.

In practice, the SLyT is a committed promoter of regulatory management tools. For instance, it was reported that senior officials from the SLyT regularly identify which agencies or ministries comply with or disregard the provisions set in *Decree 891/2017 Good Practices in Simplification*, and communicate this performance in cabinet and other high-level meetings. The SLyT was also in charge of co-ordinating the work that made possible the publication of *Decree 27/2018 of De-bureaucratisation and Simplification*, which represented an exercise of *ex post* assessment of regulation in Argentina (see Chapter 4). It also partners with the Government Secretariat of Administrative Modernisation (former Ministry of Modernisation) to champion the policy on e-government that seeks to have paperless government procedures, which includes both internal processes and formalities for businesses and citizens. All these activities are carried out by the SLyT without having an explicit legal mandate to do so.

The Government Secretariat of Modernisation (former Ministry of Modernisation)

The Government Secretariat of Modernisation was first created as a ministry by *Decree 13/2015*, and later one changed to secretariat by *Decree 801/2018*. In the area of improvement of government processes, it has the following functions (*Decree 13/2015*):

- Intervene in the definition of strategies and standards on information technologies, associated communications and other electronic information processing systems of the national administration.
- Design, co-ordinate and implement the incorporation and improvement of processes, technologies, IT infrastructure and systems and management technologies of the national public administration.
- Propose designs in the administrative procedures that facilitate their simplification, transparency and social control and develop the corresponding computer developments.
- Act as the enforcement authority of the regulatory regime that establishes the digital signature infrastructure.
- Intervene in the development of technological systems with a transversal scope, or common to the agencies and entities of the national, centralised and decentralised public administration.

On the area of regulatory policy, the Government Secretariat of Modernisation is in charge of one of the flagship programmes of the current Argentinian government: improving and streamlining all types of government processes through digitisation, both

internal and external, which include formalities for businesses and citizens.[2] For this purpose, the Government Secretariat of Modernisation oversees that ministries and agencies comply with the obligations on digitisation, including the obligation that all new formalities for business and citizens are "born electronically". Therefore, additional to the obligation of enforcing the e-government policy, the Government Secretariat of Modernisation also plays an important role of in the process of issuing new regulations, as it acts as "gatekeeper" to ensure the electronic creation of formalities for business and citizens.

Ministry of Production and Labour

Within the Ministry of Production and Labour (MPT) there is the Secretariat of Productive Simplification. In general terms, the objective of this secretariat is to promote and implement the use the regulatory management tools in order to boost the quality of regulations that have an impact on the productive activities. Among the tools promoted are the *ex ante* and *ex post* assessment of draft regulation, and administrative simplification and stakeholder engagement strategies. *Decree 174/2018 Approval of the Administrative Structure to be applied in the National Central Administration, including Under-Secretariats,* specifies some of these functions:

- Assist the Ministry of Production and Labour in the formulation of policies, proposals, implementation, evaluation, comprehensive review of regulatory frameworks and control of processes and procedures that affect the productive sector, industry, commerce and investment, directly or indirectly.
- Co-ordinate actions with agencies of the national public sector, in order to simplify norms and processes within the framework of the ministerial competencies, which affect the productive sector in burdens or costs, hindering entrepreneurship, investment, production, competitiveness and commerce.
- Design and execute technical and/or financial assistance programmes aimed at national, provincial and local agencies for the implementation of measures to simplify procedures that affect the productive sector.
- Promote transversal public policies to the national public sector, and to the provincial, municipal or local sectors, protecting the strategic interaction between the state and the productive matrix, destined to integrate all levels of government in a single policy of simplifying procedures for the productive sector.
- Promote the application of *Decree 891/17 of Good Practices in Simplification*, and international standards in terms of simplification and de-bureaucratisation of procedures related to the productive sector, in order to maximise economic growth and facilitate the competitiveness and productive development of the country.

The MPT has made operational a programme to implement the regulatory impact assessment for draft regulation to be issued by offices and units belonging to this ministry. *Administrative Resolution 229/2018 of the Ministry of Production* obliges these offices to submit to the Secretariat of Productive Simplification an *ex ante* evaluation for draft regulations that generate burdens or costs to the regulated entities a "factual report", along with the draft regulation. In turn, the Secretariat examines the fact report and issues a statement defining which elements of *Decree 891/17 for Good Practices in*

Simplification are being met and which ones require further development, see Chapter 3 for more details.

Although the Secretariat of Productive Simplification does not have the legal powers to block draft regulation from the MPT because of divergence with regulatory quality criteria, in the first few months of operation of the programme, MPT units and agencies have complied with its recommendations.

On the other hand, the Direction of Technical Regulations and Quality Promotion carries out the design, follow-up and impact assessment of technical regulations and promotion of quality aimed at enhancing competitiveness, with the purpose of carrying out an adequate strategic control regarding its instrumentation.

In this regard, on 31 July 2018, *Resolution 299/2018* was published in the Official Gazette, which establishes the process for the preparation, review and adoption of technical regulations and conformity assessment procedures. This resolution is mandatory for the units of the Ministry of Production and Labour and its deconcentrated and decentralised organisms, being the Directorate of Technical Regulations and Promotion of the Quality of the Under-Secretariat of Internal Commerce of the Ministry of Commerce the one in charge of carrying out the elaboration and review of these instruments.

This resolution is issued in order to comply with the provisions of the Agreement on Technical Barriers to Trade of the World Trade Organization, in order to implement policies related to the promotion of quality and technical compliance of goods and services aimed at improving the competitiveness of the member countries.

In Chapter 4, the activities carried out by the MPT in the simplification of formalities that affect the productive sectors are described.

Body of Lawyers of the State

The body of lawyers of the state has its origins in *Law No. 12.954 of Creation of the Body of Lawyers of the State.* One of its main functions is to provide legal advice to the executive power and to all agencies of the national public administration and to defend them before tribunals. The Body of Lawyers belongs to the office of the fiscal prosecutor and it represents a group of public officials specialising in law and litigation, who have specific rules for hiring, training and performance.

Regarding regulatory policy, the Body of Lawyers of the State has the obligation to conduct professional studies to improve the laws and regulations in force in the public administration.

Policies and practices on international regulatory co-operation in Argentina

The multi-level mechanisms of co-ordination aim to promote quality of regulation and to avoid duplication, both at the regional and international level. The past decades have witnessed rapid globalisation of economic activity which has significantly changed the outlook of the world economy. Globalisation has impacted countries and the everyday lives of citizens and businesses. The progressive emergence of an open, dynamic and globalised economy has put some light on the importance of the internationalisation of rules as a critical issue. As countries are increasingly connected across borders, regional and multilateral regulatory frameworks have emerged in a context of the increasing

internationalisation of flows of goods, services, capital and people (OECD, 2013[6]; OECD, 2016[7]).

Governments can maximise the benefits of globalisation by eliminating unnecessary regulatory divergences and barriers and ensuring greater co-ordination of regulatory objectives. The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* recognises that countries can learn from international experience. Principle 12 of the recommendation, therefore, recognises:

> *"In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction."*

OECD highlights the different ways in which a country may approach regulatory co-operation (OECD, 2013[6]). Countries may take unilateral steps to avoid regulatory divergences, notably in their domestic rulemaking procedure, for example by considering foreign and international standards in domestic rulemaking, assessing international impacts in the RIA procedures, or engaging foreign stakeholders on regulatory developments. This is a foundational step towards regulatory quality and coherence and one that is likely to facilitate the development of more ambitious international regulatory co-operation (IRC) approaches. IRC also provides the opportunity for countries to develop common regulatory positions and instruments with their peers, be it by participating in bilateral, regional or multilateral frameworks for co-operation.

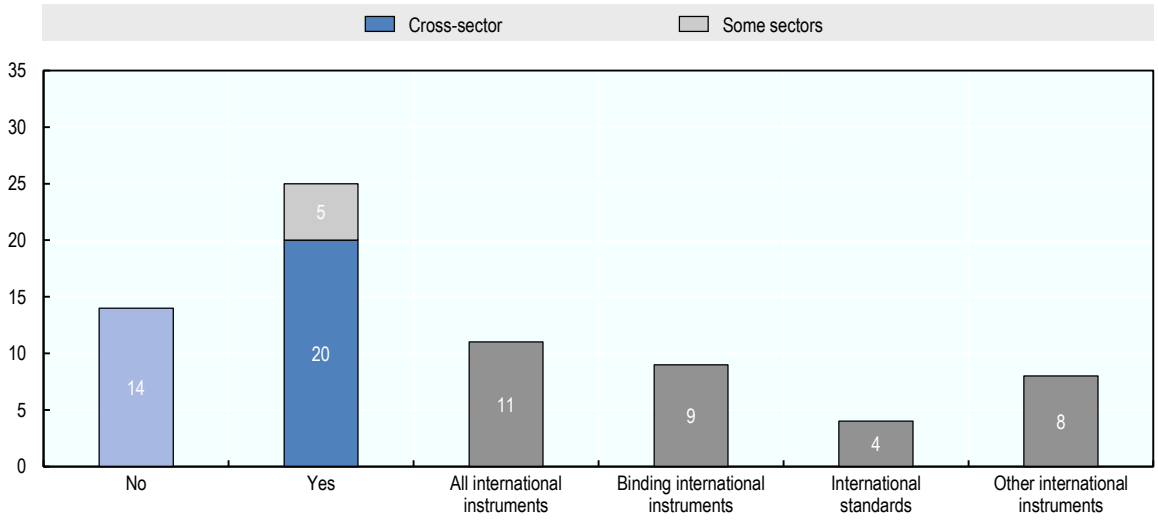
International instruments[3] may serve as a basis when developing new regulations, to align approaches with foreign countries. Particularly, the adoption of international standards into domestic regulations is usually recommended to reduce unnecessary barriers to trade when developing new regulations. Across OECD countries, legal requirements to consider international instruments when developing new laws and regulations are quite widespread (see Figure 2.3). Indeed, the consideration of international standards, in particular in domestic legislation, has significant potential to lower costs of international trade, and it supports the harmonisation of technical specification of products across export markets (OECD, 2017[8]).

Argentinian law does not set a legal requirement for regulators to consider international instruments when developing new domestic regulations or revising existing ones. This may be due to the lack of a horizontal strategy on regulatory policy that includes IRC. However, some punctual agencies such as the National Electricity Regulator have mandates to consider international standards when developing technical regulation.

Engagement with foreign stakeholders may offer evidence on unintended impacts that draft regulations have on trade. In particular, notifications of draft regulations to international fora may inform foreign governments and interested stakeholders of the existence of new drafts. This is particularly the case of the transparency framework set up under the World Trade Organization, under the agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS Agreement). Both agreements require that World Trade Organization (WTO) Members notify other members of the draft mandatory regulations which may have a significant effect on trade and are not based on international standards.

Figure 2.3. Number of jurisdictions with a formal requirement to consider international instruments in rulemaking (left) and the types of instruments considered (right)

39 respondents



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and 3 accession countries.
Source: Results from the 2017 Indicators of Regulatory Policy and Governance (iREG) Survey in OECD (2018[5]), *OECD Regulatory Policy Outlook 2018*, http://dx.doi.org/10.1787/9789264303072-en.

Argentina's Ministry of Production and Labour is in charge of notifying draft measures to the WTO Technical Barriers to Trade Agreement and the National Service of the Food Quality and Health notifies the WTO, which opens the opportunity for feedback from WTO members or interested parties. Comments are incorporated into the draft technical regulation, if applicable (see Table 2.1).

Table 2.1. Number of regular notifications since 2010

Year of notification	WTO-TBT	WTO-SPS
2017	18	8
2016	13	14
2015	12	4
2014	1	4
2013	8	11
2012	11	10
2011	7	15
2010	2	7

Source: WTO (2018[9]), *Regular TBT Notifications - Technical Barriers to Trade*, http://tbtims.wto.org/en/Notifications/Search?ProductsCoveredHSCodes=&ProductsCoveredICSCodes=&DoSearch=True&ExpandSearchMoreFields=False&NotifyingMember=Argentina&DocumentSymbol=&DistributionDateFrom=01%2F01%2F1995&DistributionDateTo=31%2F12%2F2017&Searc (accessed on 25 July 2018); WTO (2018[10]), *Search Notifications - Sanitary and Phytosanitary*, http://spsims.wto.org/en/Notifications/Search?DoSearch=True&NotifyingMember=Argentina&NotificationFormats=1&NotificationFormats=7&NotificationFormats=200&NotificationFormats=201&NotificationFormats=202&NotificationFormats=203&NotificationFormats=8&Notific (accessed on 25 July 2018).

Argentina engages in co-operation efforts, whether bilaterally, regionally and multilaterally. For example, at the international level, Argentina contributes to the International Labour Organization, the World Health Organization, International Organization for Standardization, to name a few. Argentinian regulators also participate directly in transgovernmental networks of regulators such as the International Organization of Securities Commissions or the International Association of Insurance Supervisors.

Argentina is particularly active at the regional level, driven by objectives of trade facilitation and economic integration (see Table 2.2). In particular, it participates in the MERCOSUR and leads the technical regulation commission where there are efforts to harmonise regulation. MERCOSUR is a multilateral agreement on trade between Argentina, Bolivia, Brazil, Paraguay, Uruguay and Venezuela (MERCOSUR, 2018[11]). The agreement was signed in 1991 and came into effect on 1 January 1995. According to *Ouro Preto* Protocol, "The States Parties undertake all the necessary measures to ensure, in their respective territories, compliance with the decisions adopted by the MERCOSUR entities". MERCOSUR has regional regulation to implement mechanisms to promote the compliance of developing domestic rules based on approved regional regulations (see *Decisions 023/2000 and 035/2008* of MERCOSUR).

Argentina's economic co-operation across the globe happens mainly via MERCOSUR, which has concluded agreements with other Latin American countries, i.e. Bolivia, Chile, Colombia, Mexico, Peru and beyond, i.e. Egypt and India (FTIS, 2018[12]), and is currently negotiating a trade agreement with the European Union (European Commission, 2018[13]).

Table 2.2. Landscape of international organisations to which Argentina is party

International Bureau of Weights and Measures (BIPM)
Secretariat of the Convention on Biological Diversity (CBD)
Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
International Accreditation Forum (IAF)
International Association of Insurance Supervisors (IAIS)
International Electrotechnical Commission (IEC)
International Federation of Accountants (IFAC)
International Hydrographic Organization (IHO)
International Laboratory Accreditation Cooperation (ILAC)
International Labour Organization (ILO)
International Monetary Fund (IMF)
International Maritime Organization (IMO)
International Organisation for Migration (IOM)
International Organization of Securities Commissions (IOSCO)
International Organization for Standardization (ISO)
International Telecommunication Union (ITU)
International Union for Conservation of Nature (IUCN)
World Organisation for Animal Health (OIE)
Secretariat for the Vienna Convention and its Montreal Protocol – Ozone Layer (OZONE)

Latin American and Caribbean Economic System (SELA)
United Nations Commission on International Trade Law (UNCITRAL)
United Nations Industrial Development Organization (UNIDO)
World Customs Organization (WCO)
World Health Organization (WHO)
World Intellectual Property Rights Organization (WIPO)
World Meteorological Organization (WMO)
World Trade Organization (WTO/OMC)

Note: This list is not comprehensive but gives an overview of major international organisations in which Argentina participates that may have an impact on domestic regulation.

Notes

[1] At the time, accession countries were Colombia, Costa Rica and Lithuania.

[2] Chapter 4 presents in detail these activities and the legal framework that supports them. Some of the legal instruments are also mentioned in the previous section.

[3] For the purpose of this review, international instruments cover legally binding requirements that are meant to be directly binding on member states and non-legally binding instruments (including technical standards) that may be given binding value through transposition in domestic legislation or recognition in international legal instruments. This broad notion therefore covers treaties, legally binding decisions, non-legally binding recommendations, model treaties or laws, declarations and voluntary international standards, for example.

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Annex 2.A. Legal instruments related to regulatory policy in Argentina

Annex Table 2.A.1. Legal instruments related to the regulatory policy in Argentina

Legal Instrument	Name in Spanish	Date of publication or last actualisation	Web link
Administrative Decision 313/2018: Approval of the Administrative Structure of the First Operational Level of the Ministry of Production	Decisión Administrativa 313/2018: Apruébase la Estructura Organizativa de Primer Nivel Operativo del Ministerio de Producción	March 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/307800/norma.htm
Administrative Decision 692/2017: Approval of the Administrative Structure of the First Operational Level of the National Securities Commission	Decisión Administrativa 692/2017: Apruébase la Estructura Organizativa del Primer Nivel Operativo de la Comisión Nacional de Valores	August 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/278820/norma.htm
Bylaw for Open Meetings of the Regulators of Public Services	Reglamento General de Reuniones Abiertas de los Entes Reguladores de los Servicios Públicos	December 2003	http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/texact.htm
Bylaw for the Participative Drafting of Standards	Reglamento General para la Elaboración Participativa de Normas	December 2003	http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/texact.htm
Bylaw of Access to Public Information for the Executive Power	Reglamento General de Acceso a la Información Pública para el Poder Ejecutivo	December 2003	http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/texact.htm
Bylaw of Public Hearings	Reglamento General de Audiencias Públicas	December 2003	http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/texact.htm
Bylaw of Transparency in the Management of Interests in the National Executive Branch	Reglamento General para la Publicidad de la Gestión de Intereses en el Ámbito del Poder Ejecutivo Nacional	December 2003	http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/texact.htm
Constitution of the City of Buenos Aires	Constitución de la Ciudad de Buenos Aires	October 1996	https://www.buenosaires.gob.ar/areas/leg_tecnica/sin/normapop09.php
Decree 1.063/2016: Implementation of Remotely conducted Administrative Procedures	Decreto 1.063/2016: Trámites a Distancia	October 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/266197/norma.htm
Decree 1.079/2016: One-stop-shop for Foreign Trade	Decreto 1.079/2016: Establécese el Régimen Nacional de Ventanilla Única de Comercio Exterior Argentino (VUCEA)	October 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/266261/norma.htm
Decree 1.172/2003: Access to Public Information	Decreto 1.172/2003: Acceso a la Información Pública	December 2003	http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/texact.htm

Legal Instrument	Name in Spanish	Date of publication or last actualisation	Web link
Decree 1.265/2016: Creation of the Electronic Authentication Platform	Decreto 1.265/2016: Creación de la Plataforma de Autenticación Electrónica Central	December 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/269110/norma.htm
Decree 1.273/2016: Registry Simplification	Decreto1.273/2016: Simplificación Registral	December 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/269242/norma.htm
Decree 1.398/1992: Approval of the Bylaw of the Law Nº 24.065.	Decreto 1.398/1992: Apruébase la Reglamentación de la ley Nº 24065. Apruébase la Reglamentación de los artículos 18 y 43 de la Ley Nº 15336	August 1992	http://servicios.infoleg.gob.ar/infolegInternet/anexos/5000-9999/9802/texact.htm
Decree 1.738/1992: Approval of the Bylaw of the Law Nº 24.076	Decreto 1.738/1992: Apruébase la Reglamentación de la Ley Nº 24.076, que regula la actividad de transporte y distribución de gas natural como servicio público nacional	September 1992	http://servicios.infoleg.gob.ar/infolegInternet/anexos/10000-14999/10239/texact.htm
Decree 117/2016: Open Data Plan	Decreto 117/2016: Plan de Apertura de Datos	January 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257755/norma.htm
Decree 13/2015: Ministries Law, modification	Decreto 13/2015: Modificación a la Ley de Ministerios	December 2015	http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/256606/norma.htm
Decree 134/2015: Declaration of Emergency in the National Electric Sector	Decreto 134/2015: Declárase Emergencia en el Sector Eléctrico Nacional	December 2015	http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/256978/norma.htm
Decree 174/2018: Approval of the Administrative Structure to be applied in the National Central Administration, including Under-Secretariats	Decreto 174/2018: Apruébase el Organigrama de Aplicación de la Administración Nacional Centralizada hasta el Nivel de Subsecretaría	March 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/307419/texact.htm
Decree 207/2016: Official Gazette of Argentina, Electronic Edition	Decreto 207/2016: Boletín Oficial de la República Argentina. Edición electrónica, validez jurídica	January 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257958/norma.htm
Decree 267/2015: Creation of the National Communications Agency	Decreto 267/2015: Creación del Ente Nacional de Comunicaciones	December 2015	http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257461/norma.htm
Decree 27/2018: De-bureaucratisation and Simplification	Decreto 27/2018: Desburocratización y Simplificación	January 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/305736/norma.htm
Decree 336/2017: Guidelines for the Drafting and Production of Administrative Documents	Decreto 336/2017: Lineamientos para la Redacción y Producción de Documentos Administrativos	May 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/274680/norma.htm
Decree 434/2016: Modernisation of the State Plan	Decreto 434/2016: Plan de Modernización del Estado	March 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/259082/norma.htm
Decree 561/2016: System of Electronic Management of Files	Decreto 561/2016: Sistema de Gestión Documental Electrónico	April 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/260145/norma.htm
Decree 571/2007: National Gas Regulator. Intervention of the Entity	Decreto 571/2007: Ente Nacional Regulador del Gas. Dispónese la Intervención del citado Organismo. Desígnase Interventor	May 2007	http://servicios.infoleg.gob.ar/infolegInternet/anexos/125000-129999/128376/norma.htm

Legal Instrument	Name in Spanish	Date of publication or last actualisation	Web link
Decree 594/2017: National Gas Regulator, End of Intervention	Decreto 594/2017: Ente Nacional Regulador del Gas. Cese de intervención	July 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/277522/norma.htm
Decree 62/2018: National Public Administration. Modification	Decreto 62/2018: Administración Pública Nacional. Modificación	January 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/306087/norma.htm
Decree 733/2018: Complete, Remote, Simple, Automatic and Instant Digital Processing of Administrative Procedures	Decreto 733/2018: Tramitación digital, completa, remota, simple, automática e instantánea	August 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/313243/norma.htm
Decree 78/2000: Organizational Structure of the Legal and Technical Secretariat	Decreto 78/2000: Estructura Organizativa de la Secretaría Legal y Técnica	January 2000	http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/62176/texact.htm
Decree 79/2017: Access to Public Information for the National Executive Branch, modification	Decreto 79/2017: Reglamento General de Acceso a la Información Pública para el Ejecutivo Nacional. Modificación	January 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/271338/norma.htm
Decree 801/2018: Ministries Law, modification	Decreto 801/2018: Modificación a la Ley de Ministerios	September 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/314078/norma.htm
Decree 802/2018: Administrative Structure Configuration	Decree 802/2018: Conformación Organizativa	September 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/314080/norma.htm
Decree 805/2016: Open Data web portal of the Province of Buenos Aires	Decreto 805/2016: Portal de Datos Abiertos de la Provincia de Buenos Aires	July 2016	http://www.gob.gba.gov.ar/legislacion/legislacion/16-805.html
Decree 87/2017: Creation of the Digital Platform of the National Public Sector	Decreto 87/2017: Plataforma Digital del Sector Público Nacional	February 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/271486/norma.htm
Decree 891/2017: Good Practices in Simplification	Decreto 891/2017: Buenas Prácticas en Materia de Simplificación	November 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/285000-289999/285796/norma.htm
Decree 892/2017: Platform for the Remote Use of Digital Signature	Decreto 892/2017: Creación de la Plataforma de Firma Digital Remota	November 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/285000-289999/285801/norma.htm
Decree 894/2017: Approval of the Administrative Procedures Bylaw	Decreto 894/2017: Texto ordenado del Reglamento de Procedimientos Administrativos	November 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/285000-289999/285797/norma.htm
Law 1.777: Organic Law of Communes	Ley 1.777: Ley Orgánica de Comunas	September 2005	https://www.buenosaires.gob.ar/areas/leg_tecnica/sin/normapop09.php?id=77544&qu
Law 12.954: Creation of the Body of Lawyers of the State	Ley 12.954: Creación del Cuerpo de Abogados del Estado	March 1947	http://servicios.infoleg.gob.ar/infolegInternet/anexos/35000-39999/38156/norma.htm
Law 14.828: Strategic Plan for the Modernisation of the Public Administration of the Province of Buenos Aires	Ley 14.828: Plan Estratégico de Modernización de la Administración Pública de la Provincia de Buenos Aires	July 2016	https://www.boletinoficial.gba.gob.ar/sections/6702/view#page=2
Law 14.962: Registry of Provincial Accessions to National Standards	Ley 14.962: Registro Provincial de Adhesiones a Normas Nacionales	October 2017	https://www.boletinoficial.gba.gob.ar/sections/8134/view#page=6
Law 14.98: Ministries Law of the Province of Buenos Aires	Ley 14.989: Ley de Ministerios de la Provincia de Buenos Aires	December 2017	https://www.boletinoficial.gba.gob.ar/sections/8428/view#page=1`
Law 14.989: Ministries of the Province of Buenos Aires	Ley 14.989: Ley de Ministerios de la Provincia de Buenos	December 2017	http://www.gob.gba.gov.ar/legislacion/legislacion/l-

Legal Instrument	Name in Spanish	Date of publication or last actualisation	Web link
	Aires		14989.html
Law 17.811: System for the Regulation of all the aspects regarding Public Tenders, Organization and Function of the Stock Exchanges and the Behaviour of People who work in them	Ley 17.811: Sistema actualizado que regulará en forma integral todo lo referente a la oferta pública de títulos de valores, organización y funcionamiento de las bolsas de comercio y mercados de valores y la actuación de las personas dedicadas al comercio de aquéllos	July 1968	http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16539/norma.htm
Law 19.549: Administrative Procedures Law	Ley 19.549: Ley de Procedimiento Administrativo	April 1972	http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/22363/texact.htm
Law 24.065: Electric Power Regime	Ley 24. 065: Régimen de la Energía Eléctrica	January 1992	http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/464/norma.htm
Law 24.076: Natural Gas	Ley 24.076: Gas Natural	June 1992	http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/475/texact.htm
Law 24.156: Financial Administration and Control Systems for the National Public Sector	Ley 24.156: Administración Financiera y de los Sistemas de Control del Sector Público Nacional	October 1992	http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/554/texact.htm
Law 24.430: Constitution of Argentina	Ley: 24.430 Constitución de la Nación Argentina	January 1995	http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm
Law 25.432: Binding and Non-binding Popular Consultation	Ley 25.432: Consulta Popular Vinculante y No Vinculante	June 2001	http://servicios.infoleg.gob.ar/infolegInternet/anexos/65000-69999/67518/texact.htm
Law 25.506: Digital Signature	Ley 25.506: Firma Digital	December 2001	http://servicios.infoleg.gob.ar/infolegInternet/anexos/70000-74999/70749/norma.htm
Law 25.675: National Environmental Policy	Ley 25.675: Política Ambiental Nacional	November 2002	http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/79980/norma.htm
Law 26.522: Audio-visual Communication Services	Ley 26.522: Servicios de Comunicación Audiovisual	October 2009	http://servicios.infoleg.gob.ar/infolegInternet/anexos/155000-159999/158649/texact.htm
Law 27.078: Information and Communications Technologies	Ley 27.078: Argentina Digital, Tecnologías de la Información y las Comunicaciones	December 2014	http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/239771/texact.htm
Law 27.275: Right to Access Public Information	Ley 27.275: Derecho de acceso a la información pública	September 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/texact.htm
Law 27.349: Support to Entrepreneurial Capital	Ley 27.349: Apoyo al Capital Emprendedor	April 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/273567/texact.htm
Law 27.442: Law for the Defence of Competition	Ley 2.442: Ley de Defensa de la Competencia	May 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/310241/norma.htm
Law 27.444: Simplification and De-bureaucratization for the Productive Development of the Nation	Ley 27.444: Simplificación y Desburocratización para el Desarrollo Productivo de la Nación	June 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/311587/norma.htm
Law 27.445: Simplification and De-bureaucratization for the Development of Infrastructure	Ley 27.445: Simplificación y Desburocratización para el Desarrollo de la Infraestructura	June 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/311585/norma.htm
Law 27.446: Simplification and	Ley 27.446: Simplificación y	June 2018	http://servicios.infoleg.gob.ar/i

Legal Instrument	Name in Spanish	Date of publication or last actualisation	Web link
De-bureaucratization of the National Public Administration	Desburocratización de la Administración Pública Nacional		nfolegInternet/anexos/310000-314999/311583/norma.htm
Law 28.831: Securities Market	Ley 26.831: Mercado de Capitales	December 2012	http://servicios.infoleg.gob.ar/infolegInternet/anexos/205000-209999/206592/texact.htm
Law 3.304: Law for the Modernisation of the Public Administration of the City of Buenos Aires	Ley 3.304: Ley de Modernización de la Administración Pública de la Ciudad de Buenos Aires	November 2009	http://www2.cedom.gob.ar/es/legislacion/normas/leyes/ley3304.html
Law 5.460: Law of Ministries of the City of Buenos Aires	Ley 5.460: Ley de Ministerios de la Ciudad de Buenos Aires	December 2015	https://documentosboletinoficial.buenosaires.gob.ar/publico/20151210.pdf
Memorandum of Understanding between the Federal Institute of Telecommunications of Mexico and the National Communications Entity (ENACOM)	Memorándum de Entendimiento entre el Instituto Federal de Telecomunicaciones de los Estados Unidos Mexicanos y el Ente Nacional de Comunicaciones (ENACOM)	June 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/279085/res891.pdf
Mercosur/GMC/Res Nº25/15: Guidelines for the Economic Evaluation of Sanitary Technologies	Mercosur/GMC/Res Nº25/15: Guía para Estudios de Evaluación Económica de Tecnologías Sanitarias	July 2015	https://normas.mercosur.int/simfiles/normativas/RES_025-2015_ES_Guia%20Eval%20Economica%20Res%203_13.pdf
Resolution 14/MJGGC/18: Good Regulatory Practices for the Regulation and Promotion of the Economic Activity in the City of Buenos Aires	Resolución Conjunta 14/MJGGC/18: Buenas Prácticas para la Regulación y Promoción de la Actividad Económica en la Ciudad Autónoma de Buenos Aires	September 2018	https://boletinoficial.buenosaires.gob.ar/normativaba/norma/431976
Resolution 19.091/2017: Approval of the Administrative Structure of the Level Below the First Operational Level of the National Securities Commission	Resolución 19.091/2017: Apruébase la Estructura Organizativa de Nivel Inferior al Primer Nivel Operativo de la Comisión Nacional de Valores	November 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/305016/norma.htm
Resolution 19/2018: Technical Guidelines for System Interoperability	Resolución 19/2018: Apruébase la Implementación del Módulo de Interoperabilidad	March 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/307439/norma.htm
Resolution 229/2018 of the Ministry of Production	Resolución 229/2018 del Ministerio de Producción	June 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/311022/norma.htm
Resolution 299/2018: Approval of the Process for the Elaboration, Revision and Adoption of Technical Bylaws and Conformity Assessment Processes	Resolución 299/2018: Apruébase el Proceso para la Elaboración, Revisión y Adopción de Reglamentos Técnicos y Procesos de Evaluación de la Conformidad	July 2018	http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/312892/norma.htm
Resolution 92/2016: Creation of the Public Consultation Platform	Resolución 92/2016: Créase la Plataforma de Consulta Pública en la Órbita de la Subsecretaría de Innovación Pública y Gobierno Abierto	May 2016	http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/261454/norma.htm
Resolution E6/2017: Technical Guidelines for System Interoperability	Resolución E6/2017: Pautas Técnicas de Interoperabilidad	January 2017	http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/270664/norma.htm

Source: Presidencia de la Nación Argentina (2018[14]), *Infoleg – Información Legislativa y Documental* http://www.infoleg.gob.ar/ (accessed on 03 November 2018); Gobierno de la Ciudad de Buenos Aires (n.d.[15]), *Boletín Oficial del Gobierno de la Ciudad de Buenos Aires*, https://boletinoficial.buenosaires.gob.ar/ (accessed on 29 January 2019); Gobierno de la Provincia de Buenos Aires (n.d.[16]), *Boletín Oficial de la Provincia de Buenos Aires*, https://www.gba.gob.ar/boletin_oficial/noticias (accessed on 29 January 2019).

Annex 2.B. Government institutions related to the regulatory policy in Argentina

Annex Table 2.B.1. Government institutions related to the regulatory policy in Argentina

Institution/agency	Name in Spanish
Administrative Modernisation Secretariat	Secretaría de Modernización Administrativa
Administrative Production Secretariat	Secretaría de Administración Productiva
Administrative Reform Board of the City of Buenos Aires	Mesa de Reforma Administrativa de la Ciudad de Buenos Aires
Advisor Commission of the Digital Signature Infrastructure	Comisión Asesora para la Infraestructura de Firma Digital
Agency for the Access to Public Information	Agencia de Acceso a la Información Pública
Anticorruption Office	Oficina Anticorrupción
Body of Lawyers of the State	Cuerpo de Abogados del Estado
Chief of Cabinet of the City of Buenos Aires	Jefatura de Gabinete de la Ciudad de Buenos Aires
Chief of the Cabinet	Jefatura de Gabinete de Ministros
Collaborative Centre of Subnational Governments	Centro Colaborador de Gobiernos Subnacionales
Congress of Argentina	Congreso de la Nación Argentina
Coordination Committee of the One-Stop-Shop for Foreign Trade Regime	Comité para la Implementación de la Ventanilla Única de Comercio Exterior Argentino
Council of the Magistrate	Consejo de la Magistratura
Direction of Technical Regulations and Quality Promotion of the Ministry of Production	Dirección de Reglamentos Técnicos y Promoción de la Calidad del Ministerio de Producción
Economic Development Under Secretariat of the City of Buenos Aires	Subsecretaría de Desarrollo Económico de la Ciudad de Buenos Aires
Energy Secretariat	Secretaría de Gobierno de Energía
Federal Administration of Internal Revenue	Administración Federal de Ingresos Públicos
Federal Authority of Information and Communications Technologies	Autoridad Federal de Tecnologías de la Información y las Comunicaciones
Federal Civil Service Council	Consejo Federal de la Función Pública (COFEFUP)
Federal Energy Council	Consejo Federal de Energía
Federal Environmental Council	Consejo Federal de Medio Ambiente
Federal Modernisation Council	Consejo Federal de Modernización e Innovación en la Gestión Pública de la República Argentina (COFEMOD)
Federal Regulatory Authority of Audio-visual Communications Services	Autoridad Federal de Servicios de Comunicación Audiovisual
General Accountancy Office of the Province of Buenos Aires	Contaduría General de la Provincia de Buenos Aires
General Administrator of the Nation	Sindicatura General de la Nación
General Advisory Office of the Province of Buenos Aires	Asesoría General de Gobierno de la Provincia de Buenos Aires
General Audit Office of the Nation	Auditoría General de la Nación
General Legal and Administrative Direction of the City of Buenos Aires	Dirección General, Legal y Administrativa de la Ciudad de Buenos Aires
Government Secretariat of Agribusiness	Secretaría de Gobierno de Agroindustria
Government Secretariat of Energy (former Ministry of Energy and Mining)	Secrectaría de Gobierno de Energía (antes Ministerio de Energía y Minería)
Government Secretariat of Modernisation (former Ministry of Modernisation)	Secretaría de Gobierno de Modernización (antes Ministerio de Modernización)

Institution/agency	Name in Spanish
Legal and Technical Secretariat of the City of Buenos Aires	Secretaría Legal y Técnica de la Ciudad de Buenos Aires
Legal and Technical Secretariat of the Presidency	Secretaría Legal y Técnica de la Presidencia de Argentina
Legal and Technical Secretariat of the Province of Buenos Aires	Secretaría Legal y Técnica de la Provincia de Buenos Aires
Ministry of Defence	Ministerio Público de la Defensa
Ministry of Economy and Finance of the City of Buenos Aires	Ministerio de Economía y Finanzas de la Ciudad de Buenos Aires
Ministry of Education and Innovation of the City of Buenos Aires	Ministerio de Educación e Innovación de la Ciudad de Buenos Aires
Ministry of Fiscal Affairs	Ministerio Público Fiscal de la Nación
Ministry of Justice and Human Rights	Ministerio de Justicia y Derechos Humanos
Ministry of Modernisation of the City of Buenos Aires	Ministerio de Modernización de la Ciudad de Buenos Aires
Ministry of Production and Labour	Ministerio de Producción y Trabajo
National Communications Agency	Ente Nacional de Comunicaciones (ENACOM)
National Competition Authority	Autoridad Nacional de la Competencia
National Congress	Congreso de la Nación
National Direction of Regulatory Policies	Dirección Nacional de Políticas Regulatorias
National Direction of Regulatory Policy	Dirección Nacional de Políticas Regulatorias
National Direction of the Argentinian System of Information	Dirección Nacional del Sistema Argentino de Información (SAIJ)
National Electricity Regulator	Ente Nacional Regulador de la Electricidad (ENRE)
National Gas Regulator	Ente Nacional Regulador del Gas (ENARGAS)
National Securities Commission	Comisión Nacional de Valores (CNV)
National Service of Food Quality and Health	Servicio Nacional de Sanidad y Calidad Agroalimentaria (SENASA)
National Tribunal for the Defence of Competition	Comisión Nacional de Defensa de la Competencia
Productive Simplification Secretariat	Secretaría de Simplificación Productiva
Public Communication Secretariat	Secretaría de Comunicación Pública
Southern Common Market	Mercado Común del Sur (MERCOSUR)
State District Attorney Office of the Province of Buenos Aires	Fiscalía de Estado de la Provincia de Buenos Aires
Supreme Court of Justice	Corte Suprema de Justicia de la Nación Argentina

Note: The name of some institutions may have changed due to administrative changes in the Central Government of Argentina as well as in the Provincial Governments.

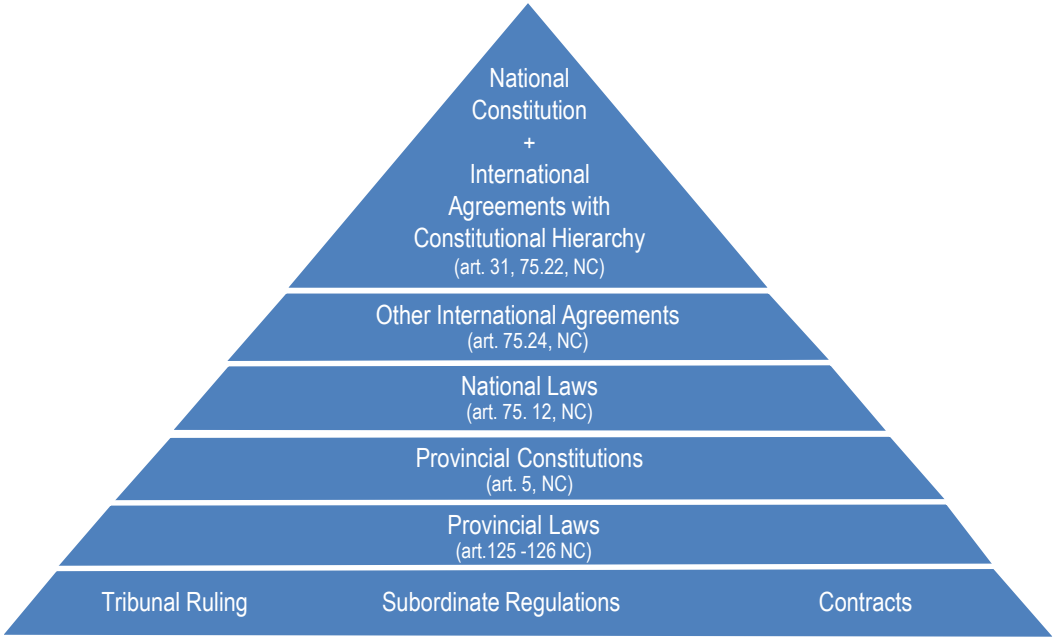
Chapter 3. *Ex ante* assessment of regulation and stakeholder engagement in rulemaking in Argentina

This chapter describes the Government of Argentina´s practices to evaluate draft regulations and discusses the actions that it undertakes to engage with stakeholders in the process of rulemaking. The section starts with a brief description of the rulemaking process and the general legal framework.

The hierarchy of laws and regulation in Argentina

The legal system in Argentina is built on Roman tradition and based on *Law 24.430 of the Constitution of Argentina*, which dates back to 1853 (the last amendment was in 1994).

Figure 3.1. The hierarchy of laws and regulations in Argentina



Source: Presidencia de la Nación (n.d.[1]), *Constitución Nacional Argentina*, https://www.casarosada.gob.ar/images/stories/constitucion-nacional-argentina.pdf (accessed on 25 July 2018).

According to Article 31, the constitution, foreign treaties and laws issued by the National Congress sit at the top of the legal hierarchy. According to Article 22, however, international treaties and the constitution are higher up the hierarchy than the laws. The next hierarchy level is held by presidential decrees. Furthermore, the heads of ministries and secretariats also have powers within their competencies to issue different regulatory instruments, which include resolutions. Subsequently, Argentina has legal instruments issued by undersecretaries and national directors. For more information on Argentina's regulatory hierarchy, please see Figure 3.1.

Rulemaking process in Argentina

The rulemaking process in Argentina is based on the activity of the legislative and executive branches, which have powers to issue laws, regulations and decrees.

Legislative power

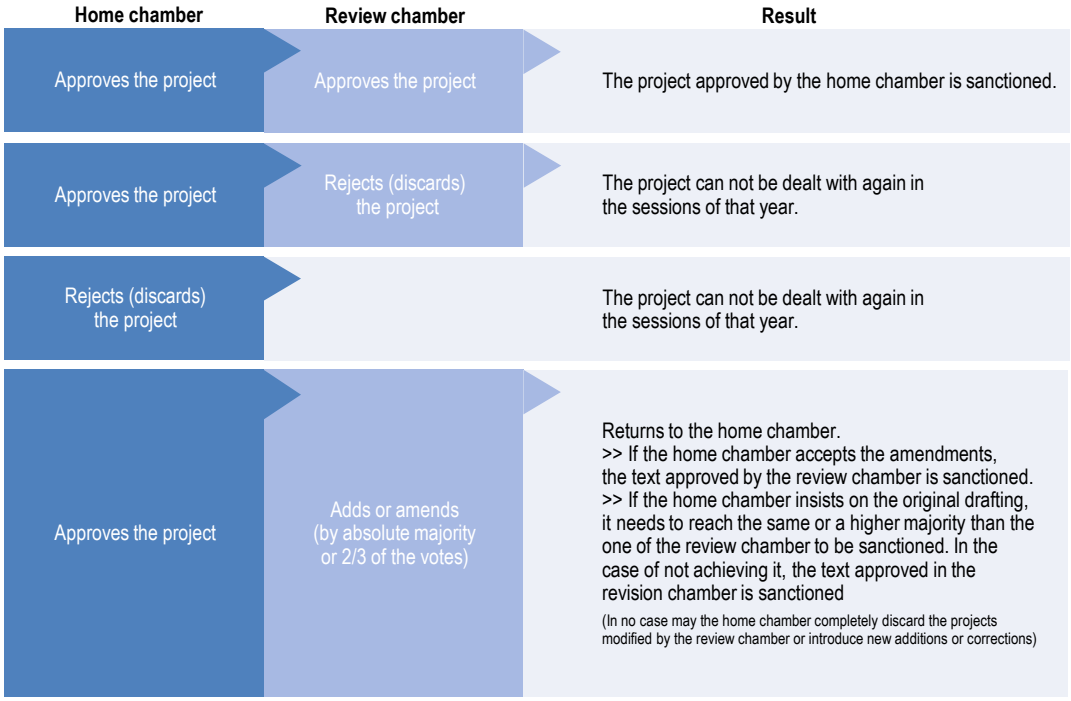
The National Congress holds the legislative power, including issuing regulation. The constitution indicates the lawmaking process and the roles of both chambers – deputies (Articles 39, 40 and 53) and senators (Articles 59, 61 and 75). Bills have three stages:

- **Draft presentation,** made by both chambers.

- **Discussion in commissions:** the draft regulation goes to one or more advisory commissions, which will issue an "opinion". This step can be omitted depending on urgency or relevance.
- **Parliamentary debate**: held in both chambers.

The chamber presenting the bill is denominated "home chamber"; the other is the "review chamber", whose task is to approve, reject or return the draft in question for corrections (Figure 3.2).

Figure 3.2. Process to issue laws in the Argentinian Congress



Source: Congreso de la Nación Argentina (n.d.[2]), *Las Leyes*, https://www.congreso.gob.ar/leyes.php (accessed on 10 July 2018).

After the chambers of the senate and deputies issue their opinion regarding the proposed legislation, the project goes to the executive branch and can pursue two routes:

- **Approve and issue the law:** this can be carried out through a decree or *promulgation in fact*. Thus, if the president does not make any comments within ten business days of receiving the regulation, the project is automatically promulgated. In both cases, the law is issued in the official gazette and comes into force according to the legal terms set forth in the law enacted.
- **Total or partial veto:** in case of a partial veto, the section that has not been vetoed can be partially promulgated if it does not undermine the spirit of the draft analysed by congress. If there is a full veto, the draft returns to the legislative branch, which may confirm the veto or push for approval. For the approval, both chambers must have two-thirds of the votes to impose their initial criteria and enact the law, despite not having the approval of the president. If the number of votes is not reached, the president's veto remains and the draft law cannot be discussed in the sessions of the same year.

Judicial power

The regulatory powers of the judicial branch are limited to cases presented for its consideration on topics under its jurisdiction. Finally, the Supreme Court has sufficient powers to invalidate acts issued by government agencies.

Executive power

According to Article 99 of the Argentinian Constitution, the executive has the power to (Art. 99):

- Issue instructions and regulations that are necessary for the enforcement of the laws.
- Participate in drafting, issuing and publishing the laws set out in the constitution.

The ministers, on the other hand, may issue general administrative regulation according to their attributions.

Elements of *ex ante* assessment of regulation

Legal framework of ex-ante assessment

The government of Argentina has not adopted a standardised system for *ex ante* assessment of draft regulations. The regulatory framework, however, has instruments and mechanisms promoting regulatory quality. The instruments and practices of regulatory quality will be described below.

Administrative Procedures Law

Law No. 19.549 of Administrative Procedures indicates the required elements that any administrative act must contain in order to be a legal document. The law refers to the protocols regarding the motivations of the act, the issuing processes and their objectives. Besides, it provides situations when the acts can be confirmed, nullified, revoked, voided and reformed.

Good practices in simplification

The main objective of *Decree 891/2017 of Good Practices in Simplification* is to introduce a quality assessment in the process to issue regulatory instruments by the national public sector. This means that the decree is mandatory for all public sector agencies. The decree does not, however, nominate an oversight body responsible for the implantation strategy for regulatory quality practices and tools. Thus, each agency in the regulation issuing process is responsible for adopting such practices.

The decree describes the main practices and tools that regulations must follow in order to be effective. It establishes, for instance, provisions for regulatory simplification, *ex ante* assessment of draft proposals, cost-benefit analysis of potential regulations, etc. The decree, however, does not provide indications, guidelines or references on how to implement practices and tools.

On the other hand, the decree establishes principles that must follow regulation instruments. For example, it indicates that regulations must be simple, clear and transparent, taking into account any administrative burdens.

Law for the defence of competition

Law No. 27.442 for the Defence of Competition sets the conditions for markets to operate efficiently. Furthermore, it details practices that may hamper, limit, restrict or distort the competition playing field, as well as impede access to free markets.

Law No. 27.442 creates the National Competition Authority, a decentralised and self-sufficient agency with wide-ranging national competency. The law also provides directions to create the National Tribunal for the Defence of Competition under the umbrella of the competition authority.

A relevant role assigned by the law to the Tribunal for the Defence of Competition, in the context of the assessment of regulations is to issue a non-binding opinion on the impact that laws, regulations and other instruments may have on competition in product markets (Law of Defence of Competition).

Procedure for ex ante *assessment of draft regulation by the Ministry of Production and Labour*

Resolution 229/2018 of the (former) Ministry of Production regarding the Procedure for Ex-ante Assessment of Draft Regulation establishes that all the units of the ministry, as well as its decentralised and deconcentrated bodies, must request the opinion of the Secretariat of Productive Simplification regarding the potential administrative burdens originated by draft regulations. In response, the secretariat will carry out an evaluation project, taking into account the objectives of the regulation, the potentially affected population, the alternatives to regulatory solutions and where appropriate a cost-benefit analysis.

Relevant practices on* ex ante *assessment adopted in Argentina

A number of government agencies have taken steps to improve the quality of regulation. This section will describe the relevant practices adopted in the executive branch to improve the quality of draft regulations.

Participation in international regulatory co-operation projects

The Federal Institute of Telecommunications from Mexico and the National Communications Agency signed a memorandum of understanding or MoU (ENACOM e IFT, 2017[3]). One of the objectives of this MoU is to promote international regulatory co-operation between both agencies. It is worth mentioning the collaboration efforts regarding good regulatory practices, particularly in the use and implementation of tools related to the regulatory impact assessment (RIA) system. Furthermore, as one of the avenues for collaboration, the MoU includes the elaboration of an assessment of the impact of the regulatory framework on the telecommunications industry.

Implementation of guidelines for economic evaluation

Under the Mercosur treaty, Peru published *Resolution No. 25/15 Guide for Economic Evaluation Studies of Sanitary Technologies* (MERCOSUR, 2015[4]). The guidelines provide a general description of the evaluation methodologies available to assess the economic impact of sanitary technologies. It covers a broad range of concepts including quantitative evaluations such as cost-benefit analysis or quality-adjusted life years and qualitative definitions as clinical trials, among others. Also, the document establishes the

elements that must be included in the presentation of an economic evaluation study. The former should be written in a clear and detailed way; with a complete explanation of the methodology employed. It must also contain a short executive summary that can be understood by non-technical readers.

Adoption of international regulation

The Sub-Direction of Standards of the National Securities Commission is in charge of the preparation, revision and correction of CNV regulatory proposals. Moreover, the sub-direction is responsible for adapting the existing regulatory framework to international standards.

Ex ante *assessment of draft regulation*

The Ministry of Production and Labour, through the Secretariat of Productive Simplification, evaluates the regulatory projects of all instances of the ministry that entail burdens or generate costs for the regulated subjects. The secretariat analyses the draft regulations and issues a report, either a Regulatory Policy Analysis or a Good Practices Analysis. Both documents assess the general conditions of the regulatory proposal; the problems that give rise to the project; the general objectives that are pursued with the regulation and identify the regulated subjects. Furthermore, the analyses include a cost-benefit analysis and propose management indicators for the regulatory proposal. Finally, the secretariat evaluates if the draft proposal complies with good regulatory practices in matters of simplification (*Decree 891/2017*).

The assessment of the regulatory proposal under the scope of the principles proposed in *Decree 891/2017 of Good Practices in Simplification* is done on a case-by-case basis. Once the secretariat receives a draft regulation from any administrative area of the Ministry of Production and Labour, it will have ten business days to issue the corresponding report, which is mandatory for the requesting entity (*Resolution 229/2018 of the Ministry of Production*).

Technical reports

In order to be approved, every regulatory project must have a technical report attached. This is a common practice across the national government, but it is not a compulsory practice and the format is not standardised. The drafting of the report and its contents are not based on guidelines; thus, they depend on the entity in charge of the draft regulation.

The technical report, regardless of the specific legal analysis requested on the regulatory proposals, contains a legal evaluation to justify its technical feasibility. It may also contain specialised information on the regulated topic, a cost-benefit analysis and other types of assessments such as environmental, health, trade, poverty, economic, etc.

Stakeholder engagement in the process of rulemaking

Legal framework

In Argentina, the participation of civil society in the drafting of regulations was ruled and mandated in 2001, when *Law No. 25.432 of Binding and Non-Binding Popular Consultation* was issued by National Congress. It is only in the last few years, however, that this practice effectively began to be adopted by ministries and national government

agencies. The main legal framework and practices for stakeholder engagement in rulemaking are presented below.

Law of Binding and Non-Binding Popular Consultation

Law No. 25.432 of Binding and Non-Binding Popular Consultation published in June 2001 establishes the conditions to carry out consultations for bills and other issues of general interest. For bills, the result of public consultation will be binding but not for general interest consultations. Therefore, for binding consultations, the bill will automatically become law, while non-binding bills will be incorporated into the work plan of the Chamber of Deputies. In any event, laws will be published in the Official Gazette and in high-circulation newspapers.

The consultation process described in the law is a relevant space for public participation, however; it does not allow for drafting counterproposals or expressing opinions, as the questions are in binary mode (yes/no).

Right to Access to Public Information

Law No. 27.275 of Right to Access Public Information promotes transparency and stakeholder engagement by defining the legal framework for the disclosure of public information. In addition, the creation of the Agency for the Access to Public Information as the body in charge of overseeing the compliance of this law is an important step to increase trust in the government.

The law ensures its regulated subjects are "actively transparent", meaning that entities have to facilitate the search and access to public information. Data must be available in digital formats that are easy to use and free of charge.

Decree 1.172/2003 of Access to Public Information emerges from the need to promote the relationship between the government and civil society, as well as the need for transparency and efficiency criteria. The decree contains five bylaws ruling public participation in the drafting of regulations and access to public information.

The Bylaw of Public Hearings specifies that any interested party can express his/her opinion on topics to be consulted by the executive power. A public hearing can be requested by citizens or legal persons, either public or private, from the authority with competency in the subject.

The Bylaw of Transparency in the Management of Interests in the National Executive Branch has the objective to promote transparency of public hearings through the establishment of a public registry with basic information.

The Bylaw for the Participative Drafting of Standards guides the process by which civil society is involved in the drafting of administrative directives and bills that will not be presented to congress by the executive power. The process described in this bylaw is similar to the public hearings with small differences, such as the prior registration of participants and specific formats to submit opinions.

The Bylaw of Access to Public Information for the Executive Power promotes effective public participation granting the rights of citizens to request and receive complete, adequate and truthful information from public entities of the executive power in due time.

The Bylaw for Open Meetings of the Regulators of Public Services regulates the meetings convened by public-service regulators to allow citizens to attend and observe the decision-making process.

National Modernisation Plan

Decree 434/2016 approves the National Modernisation Plan with the objective to achieve a citizen-oriented public administration. In order to fulfil such an objective, the plan was divided into five areas. The fourth area of Government and Public Innovation focuses on four activities:

- Encourage the active participation of citizens in decision-making processes, as well as in the design, implementation, monitoring and evaluation of public policies.
- Promote the adoption of new technologies promoting citizen participation in government affairs.
- Develop mechanisms, channels and platforms aiming to facilitate participative drafting of standards.
- Simplify the procedures and holding public hearings.

Relevant practices in stakeholder engagement

Extending stakeholder engagement through the Public Consultation Platform

On May 2016, the Ministry of Modernisation introduced the Public Consultation Platform – https://consultapublica.argentina.gob.ar/. This platform is expected to gather all public consultations carried out by institutions of the executive branch of the government (*Decree 87/2017*). The website has been used by the Ministry of Interior, the Anticorruption Office and ENACOM.

Public agencies must fill in a template with a list of criteria before they carry out a consultation. The former guarantees the correct management of information that is gathered on the platform. Moreover, citizens have to register to access the website and issue their comments or proposals on the initiatives.

Increasing availability of public information through digital repositories

On January 2016, the former Ministry of Modernisation introduced the Open Data Plan which compels the institutions of the executive branch of the government to publish their data assets (*Decree 117/2016*). Each entity had 180 days to submit a plan with a defined chronogram of gradual publication.

The Open Data Plan website – https://datosgobar.github.io/pad/ – is an intuitive and user-friendly platform, which includes detailed data points from the ministries of the national executive branch. However, information is not available for the year 2018 (*Decree 87/2017*).

Good Practices in Simplification

Decree No. 891/2017 for Good Practices in Simplification establishes the guidelines that must be observed by government entities to increase citizen participation in the issuance of their regulation, as well as promoting the exchange of ideas, consultation and

collaboration. The decree promotes the use of new information technologies to facilitate the understanding of recent regulations and to acknowledge the impacts that they will generate in citizens and in the economy.

Citizen Dialog

The Secretariat of Public Communication promotes the linkage between the national government and citizens, especially through the use of technological tools as instruments. Some of the activities that the secretariat carries out are aimed at promoting communication of the activities of the national government and disseminating them through the official website and different social networks, thereby strengthening transparency in the government performance. On the other hand, through citizen engagement, methodologies are also implemented to establish a direct dialogue with citizens in order to provide a communication solution to each social problem in particular.

Case study: Stakeholder engagement in rulemaking by the National Securities Commission

The National Securities Commission (NSC) is an independent body that was created in 1968 with *Law 17.811 of Public Offer*. Nowadays its operation is determined in *Law 26.831 of the Equity Market of 2012*. Although its relations with the executive power are maintained through the Ministry of Finance, the NSC has no obligation to consult the ministry for the preparation of its own regulations. The regulation of the NSC is issued through general resolutions, but it can participate in the issuance of ministerial resolutions, the competency of the Ministry of Finance.

Even though the commission is an independent body and has autonomy to issue the regulation, in 2017 – in line with best international practices – it started to engage with stakeholders in the process. However, in November 2017, it published on its website a press release to perform a public consultation of three relevant projects for the equity market. The NSC indicated the channel via which to receive opinions or proposals from stakeholders, the participation deadline and the regulatory projects subject to this.

Derived from the good results of this exercise, in particular in a regulation related to the formulation of a new definition of "Independent Director", the NSC decided to adjust its internal normative framework for the adoption of tools that promote the participation of stakeholders in the normative production process. The process is regulated by *Law 19.549 of Administrative Procedures*, its decree and *Decree 336/2017*.

Therefore, by a Board of Directors decision, the application of the *Reglamento* for Participatory Drafting of Standards of *Decree 1172/2003 of Access to Public Information* for all regulatory projects of the NSC was implemented at the end of 2017.

This *Reglamento* empowers natural or legal persons to participate in issuing the regulation of the commission. Although the comments received are not binding, it promotes dialogue between NSC and civil society, and citizen participation on the drafting of regulation and transparency. In addition, with this, standards align with international principles in the drafting procedure for the equity market field.

The procedure was performed through the commission's website (https://aif.cnv.gov.ar/consultaPublica/) and included the following steps:

1. Issuance of an administrative act, in which is stated:
   - The authority in charge of the process.
   - Text and legal basis of the normative proposal.
   - The channel through which opinions and/or proposals can be presented.
   - Format to send opinions and/or proposals.
   - Deadline to present opinions and/or proposals.

   This administrative act is published in the Official Gazette and on the commission's website (www.cnv.gob.ar).
2. Evaluation of the opinions and/or proposals received. In the legal basis of the final decision of the regulation should be recorded the opinions and/or proposals submitted and the changes that were made to the text as a result of this process.
3. Publication of the regulations in the Official Gazette and on the NSC website.

In addition to this tool, the commission also carries out other activities to involve stakeholders in the issuance of its regulations, such as fora, specific consultations and working groups, among others.

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Chapter 4. Administrative simplification policies and the management of the stock of regulation in Argentina

In this chapter, recent and current initiatives and practices implemented by the Government of Argentina on administrative simplification and ex post *analysis of regulation are described and discussed.*

Administrative simplification policies and practices

The Argentinian government has adopted the highest political commitment to the modernisation of the National Public Administration. By promoting an ambitious agenda, the national authorities recognised the importance of increasing the quality of public services by embracing the use of information and communication technology (ICT) and in this way reduce administrative burdens for citizens and businesses. In Argentina, the administrative simplification actions depend on four main actors; the Government Secretariat of Modernisation, the Legal and Technical Secretariat, and more recently, the Ministry of Production and Labour who has taken a more relevant role, especially after the introduction of *Decree 62/2018*, which creates the Administrative Simplification Secretariat.

The Administrative Modernisation Secretariat and the Modernisation of the State Plan

The Administrative Modernisation Secretariat is responsible for the design, proposal and co-ordination of the transformation and modernisation policies in the National Administration (*Decree 13/2015*). It is in charge of the implementation of ICT tools and solutions that allow the digitisation of procedures inside the administration and towards businesses and citizens. The Administrative Modernisation Secretariat ultimate goal is the complete establishment of paperless government procedures. To date, the Secretariat of Administrative Modernisation reports that virtually all internal government processes are digitised and that 1 325 formalities for businesses and citizens can be managed to a varying degree on line through the portal tramitesadistancia.gob.ar. While the benefits for citizens and businesses of the use of digitised government formalities as opposed to traditional paper and face-to-face procedures are evident, the evidence collected by the OECD is that there were no explicit administrative simplification strategies during this process.

The e-government policy that embraces and provides support to the digitisation actions of government processes of Argentina is included in the Modernisation of the State Plan, which was implemented through *Decree 434/2016* on March 2016. The plan follows a similar strategy implemented a few years back in the Autonomous City of Buenos Aires. The provisions set in the decree apply to all the institutions of the central public administration, the decentralised and deconcentrated bodies and the state-owned enterprises of the Government of Argentina. The plan revolves around five key elements:

- Technology and digital government.
- Human resources.
- Management based on results and public commitment.
- Open government and public innovation.
- Digital-country strategy.

Notably, the technology and digital government component of the modernisation plan implies the development of better management of the processes inside the administration, on top of the implementation of remote formalities and digital services for the citizens and businesses.

The modernisation plan gave the National Government the overarching policy framework, from which the required legal instruments for the development and implementation the e-government policy was issued. The objective of this set of legal instruments was to revamp the public administration, mainly through the use of ICT tools. Table 4.1 includes the relevant legal framework that supports the e-government efforts in Argentina.

Table 4.1. Legal instruments that allow an e-government policy to be in implemented in Argentina

		Date of emission
Decree 434/2016	Modernisation of the State Plan	1 March 2016
Decree 561/2016	System of Electronic Management of Files	6 April 2016
Decree 1.063/2016	Implementation of Remotely Conducted Administrative Procedures	4 October 2016
Decree 1.079/2016	One-stop-shop for Foreign Trade	7 October 2016
Decree 1.265/2016	Creation of the Electronic Authentication Platform	15 December 2016
Decree 1.273/2016	Registry Simplification	19 December 2016
Decree 87/2017	Creation of the Digital Platform of the National Public Sector	2 February 2017
Decree 892/2017	Platform for the Remote use of Digital Signature	2 November 2017
Resolution 19/2018	Technical Guidelines for System Interoperability	2 March 2018
Decree 733/2018	Complete, Remote, Simple, Automatic and Instant Digital Processing of Administrative Procedures	9 August 2018

The Administrative Modernisation Secretariat has benefited from the support of the Legal and Technical Secretariat (SLyT) to draft, issue and enforce the necessary legal framework for the e-government policy. Currently, the SLyT is aware of the relevance of a sound administrative simplification policy and has shown a strong commitment towards the modernisation of the public administration. Since the start of the current administration, the SLyT has been a key player to issue the legal instruments that are necessary for the use of ICT tools in government processes.

The implementation of a paperless government

In terms of the strategy to improve government processes, the country's strategy focuses on the extensive digitisation of government processes and procedures. The idea is to create a paperless government, in which all the procedures are made digitally. The evidence collected by the OECD was that while there were a clear improvement and simplification of processes in the conversion from physical procedures to paperless systems, Argentina did not actively seek the reengineering of processes.

The first step towards the digitisation of procedures was the creation of the System of Electronic Management of Files (GDE). This platform made the use of digital files mandatory for the public administration. Procedures such as human resources formalities and budget-related issues were incorporated first to the system, as they are common to all ministries and entities. Although the platform replicates the physical formats, important gains have arisen from the reduction in the time it takes to process a request.

Currently, the GDE platform is fully operational and has made completely digital the communication between entities and public officials at the federal level. This system allows several administrative areas to work simultaneously on a file, increases traceability and allows for information to be attached. Furthermore, officials are able to sign the

documents and resolutions using their digital signature, which reduces the bureaucracy inside the administration.

The second stage on the digitisation strategy involved the interaction of citizens and businesses with the public administration through a digital platform. The Remotely Conducted Administrative Procedures system allows citizens and businesses to send and receive information required for a formality (*Decree 1063/2016*). The website tramitesadistancia.gob.ar gathers all the formalities that can be managed by the citizens and businesses remotely to varying degrees, that is, to send information to the government, receive information from them, obtain the official response or all of them together. The site is organised by institution, subject or category. Currently, the Argentinian government has 1 244 formalities available remotely and this number is likely to increase rapidly.

As a complement to the to the Remote Formalities System, the Administrative Modernisation Secretariat issued the provisions for the creation of the Electronic Authentication Platform. It verifies the credentials of the system users and provides certainty to the authorities about the person who is accessing the platform. This instrument increases the trust of the citizens and businesses on the government's electronic tools. Furthermore, it is a necessary step towards the development of more remote procedures and formalities.

On January 2017, the Government Secretariat of Modernisation introduced the Technical Guidelines for System Interoperability. The guidelines specify the technical requirements for the design, scope and architecture of the systems that are used to exchange information among institutions.[1] The institution that needs a piece of information under the control of another organisation must submit a request through a module in the System of Electronic Management of Files.

Many of the initiatives mentioned above converge in the digital platform for the public sector. The platform was introduced in February 2017 and derives from the desire of the public administration to improve the quality of the services offered to the citizens, especially those that can be managed remotely.

The website argentina.gob.ar includes the electronic profile of citizens, allows users to make appointments to carry out an administrative procedure and includes a list of formalities arranged by life events – further details are included in the following section. Also, the platform should include all the websites that are currently available, as well as those that are created in the future (*Decree 87/2017*).

On August 2018, *Decree 733/2018* was introduced. This legal instrument is the last addition to the list of regulations that promote a paperless government and streamlined procedures. The aforementioned decree covers some of the points discussed above since it makes it mandatory for entities of the National Public Administration to have defined deadlines for administrative procedures that must be made by citizens and businesses, eliminates the possibility of requesting physical documents and restricts the number of times that a piece of information can be asked from the regulated subjects (*Decree 733/2018*). Although this decree reduces significantly the administrative burden faced by society, it does not mean that all formalities that are done by citizens and businesses are available digitally.

Other institutions, policies and practices for administrative simplification in Argentina

Decree 891/2017 for Good Practices in Simplification

In the second half of 2017, Argentina issued *Decree 891/2017 for Good Practices in Simplification*, whose main objective was the elimination of outdated regulations and the simplification of laws, formalities and rules are necessary elements to improve the quality of the public services. It is also particularly relevant as it emphasises four elements that reduce red tape and aims at controlling de regulatory stock, which are:

- **Regulatory simplification**: Regulations should be clear, precise and easy to understand. In many cases, regulations are drafted using confusing language and are not straightforward, which leads to misunderstandings and difficulties in terms of implementation and compliance. By elaborating better-drafted regulations and revising existing ones, the government reduces the administrative burden for citizens and businesses.
- **Continuous improvement**: The public administration should encourage the use of ICT tools to improve the process and, therefore, reduce the response time to issues presented by the citizens. Anecdotal evidence shows that uncertainty regarding response time is one of the main complaints of businesses. The creation of streamlined procedures in which public institutions comply with the deadlines imposed by the regulation improves the business environment and fosters a better relationship with the regulated subjects.
- **Digital government**: The federal government should promote collaboration with subnational governments, especially through the use of ICT. The interoperability of the systems and platforms used by the different administrative levels and institutions – also promoted by *Decree 87/2017* – should make it easier for the citizens to interact with the government. Moreover, the development of an environment in which institutions exchange information should reduce the information requirements and paperwork for citizens and businesses. The former is particularly important, as "paperwork is usually identified by regulated subjects as the most annoying and as a negative symbol of bureaucracy" (OECD, 2010[1]).
- **Creation of registries**: New registries in the central administration must be digital and approved by the Chief of the Cabinet of Ministers. The idea behind is to limit the establishment of new requirements for the regulated subjects, on top of making existing registries available on line and free of access. On meetings with line ministries, officials mentioned as an issue the constant creation of registries and the administrative burden that they imply.

The measures established in *Decree 891/2017 for Good Practices in Simplification* are in the right direction and follow practices of OECD member countries, but they should be complemented with proper oversight arrangements. Furthermore, the lack of formal guidelines might limit the implementation of the practices included in the legal instrument.

All the efforts mentioned above are horizontal initiatives that can be used by all the institutions of the Argentinian government. However, simplification and digitisation of formalities and procedures on specific sectors such as trade and small and medium-sized enterprises (SMEs) have also taken place. The One-stop-shop for Foreign Trade and the

creation of a new type of societal figure to help SMEs – the Simplified Shares' Partnership – are the most notable initiatives.

One-stop-shop for Foreign Trade

The Argentinian Government acknowledged the importance of simplifying the formalities and procedures faced by firms that want to import or export goods. This is why, in October 2016, the Ministry of Production issued *Decree 1079/2016* that creates the One-stop-shop for Foreign Trade with the following objectives:

- Provide more efficiency in the administration of formalities.
- Gather procedures, regulations and formalities to optimise their application.
- Simplify and improve the administration of formalities.
- Manage the information and data of the public entities.

Two main bodies are in charge of the creation of the Single Windows of Foreign Trade (VUCE), the Coordination Committee and the Executing Unit of the One-stop-shop Regime. The Coordination Committee gathers representatives from the Chief of the Cabinet of Ministers, the Government Secretariat of Modernisation, the Ministry of Production and Labour and the Federal Administration of Internal Revenue. It is in charge of promoting relevant regulations, develop ICT tools and allow for the interaction between different IT systems. Furthermore, it must design the guidelines that will follow the VUCE to comply with the rules of the MERCOSUR and the World Customs Organization.

As a complement to the objectives of the committee, the executing unit of the One-stop-shop Regime focuses on the implementation and administration of the VUCE (*Decree 416/2017*). The unit is a deconcentrated body of the Ministry of Production and Labour and its objectives are closely linked to the simplification of procedures, bylaws, rules and formalities related to foreign trade in order to provide greater efficiency, promote a paperless administration and co-ordinate the institutional actors involved in the VUCE. It is worth mentioning that the unit is set to cease existing in 2021 – when the VUCE should be fully functional according to the plan set by the Argentinian government.

Users can access the VUCE through the website https://www.argentina.gob.ar/vuce, which contains relevant information organised by the institution. At the time of the elaboration of this report, the VUCE included 291 formalities distributed according to Table 4.2.

Furthermore, the VUCE includes a module called Easy Export, which streamlines the exportation process, especially for SMEs. To use the Easy Export platform businesses must comply with four major requirements: i) the goods must be new; ii) the shipping weigh must be less than 300 kg; iii) the value of the merchandise must be less than USD 15 000; and iv) the value of the exports during the year must be less than USD 600 000. This platform offers a completely remote option for small businesses that want to export. It eliminates the formalities, easing the procedure and reducing the costs and administrative burdens.

As with other initiatives to improve government processes, the focus on the VUCE was to have paperless procedures. This has benefited citizens and businesses as the administrative burdens have been reduced due to savings in time for not having to visit

physically government offices and thanks to the management of the formalities on line. As in the rest of the other e-government initiatives, little evidence was found of an active strategy of administrative simplification in the implementation of the VUCE, such as the elimination of data requirements.

Table 4.2. Formalities available in the VUCE

Number of formalities available by institution

Border Security (1)	Ministry of National Security (10)	National Geographic Institute (1)
Ministry of Agroindustry (25)	Ministry of Production and Labour (96)	National Seed Institute (7)
Ministry of Culture (4)	Ministry of Science, Technology and Productive Innovation (8)	National Scientific and Technical Research Council (3)
Ministry of Energy and Mining (5)	National Administration of Medicines, Food and Medical Technology (63)	National Viticulture Institute (5)
Ministry of the Environment and Sustainable Development (18)	National Agency for Controlled Materials (9)	Nuclear Regulatory Authority (2)
Ministry of Justice and Human Rights (3)	National Food Safety and Quality Service (26)	Transport Regulatory Commission (5)

Note: The agencies in charge of the formalities may have changed due to the reorganisation of the Public Administration (*Decree 801/2018* and *Decree 802/2018*).

Simplified Shares' Partnership

As a way of encouraging entrepreneurial activity in the country and promoting its introduction in the international markets, the Argentinian government issued *Law 27.349 of Support to Entrepreneurial Capital*. The law created a new kind of legal figure that simplifies and reduces the procedures that businesses, and especially SMEs, need to follow to formalise their activities. The Simplified Shares' Partnership (SAS) can be created and registered remotely with the participation of one or more partners. This reduces the time and resources that entrepreneurs devote to complying with the regulation (*Law 27349*).

Currently, the SAS are only available for businesses located in the City and the Province of Buenos Aires; however, the Ministry of Production and Labour is working with the rest of the provinces to implement the necessary changes to introduce the SAS in their legislation.

The Productive Simplification Secretariat

On January 2018, the Productive Simplification Secretariat was created and incorporated to the Ministry of Production and Labour (MPT). The secretariat focuses on the de-bureaucratisation of procedures, laws and formalities that are relevant to the industry, businesses and investment (*Decree 62/2018*)

In the practice, the Productive Simplification Secretariat has focused on two tasks: the *ex ante* assessment of draft regulation coming from the MPT, and the reduction of burdens from formalities for citizens and businesses belonging to the MPT. Even though the secretariat was recently created, it has defined guidelines on topics such as cost-benefit analysis and quantification of compliance costs to perform these tasks.

On *ex ante* evaluation, the secretariat has evaluated draft regulations for the automotive and auto parts market and for certificates of origin. The assessments of these regulations include recommendations on the language that is used, the identification of data requirements that are unnecessary and the detection of paragraphs that should be eliminated from the regulatory proposal. See Chapter 2 and Chapter 3 for more information on this topic.

On reduction of burdens, the Productive Simplification Secretariat has taken an active role to implement a programme within the MPT to reduce administrative burdens for citizens and businesses, using the methodology of the Standard Cost Model (SCM) as the guiding framework. OECD governments are keen on carrying out administrative burdens reduction programmes as their results are easy to understand and to communicate to the citizens (OECD, 2010[1]). The measurement of administrative burdens is also helpful since it defines a baseline for governments to start improving their regulations and allows for the definition of priorities regarding which formalities and procedures simplify first.

Most of the OECD member countries use the Standard Cost Model (SCM), or an adaptation of it, to measure their administrative burdens. The SCM considers the time that citizens – or people that have to comply with a regulation – devote to the preparation of the paperwork, the time it takes them to go to the government's office, waiting time at the office and the cost of the supplies that were necessary to fulfil all the requirements set in the formality or regulation (SCM Network, n.d.[2]).

Currently, although within the Argentinian government there is no legal obligation to measure the administrative burdens of regulations and formalities, the Productive Simplification Secretariat is putting the topic on the table and has issued documents describing the SCM as well as the relevance of measuring administrative burdens. The secretariat also reports that it has applied measures of administrative simplification to 43 formalities belonging to the MPT, and using the SCM, it has measured that these actions have reduced burdens to citizens and businesses in the order of ARS 21 million.

Management of the stock of regulation

Access to the stock of administrative procedures and regulations

Making the stock of administrative procedures and regulations available to citizens and businesses is a way of increasing transparency and reducing the room for corruption. In fact, *Law 27.275 of the Right to Access to Public Information* acknowledges this and promotes the participation of society and transparency in the public administration by making available the information managed by entities of the Argentinian government.

The Argentinian government provides free access to its stock of regulations through several databases: i) Official Gazette (www.boletinoficial.gob.ar); ii) legislative databases (www.infoleg.gob.ar); and iii) judicial repositories (www.saij.gob.ar). These websites can be accessed freely and they seem to be in line with practices followed by OECD countries.

Furthermore, the website www.argentina.gob.ar contains formalities organised by life events and services. This arrangement makes it easy for citizens and businesses to find relevant information. However, during the several meetings that the OECD secretariat and the peer review team held with ministries and agencies of the Argentinian government, they stated that they could not confirm that the complete inventory of formalities and administrative procedures is included in this website.

Also, it is necessary to point out that most ministries and public institutions do not know exactly the number of formalities that they manage and do not have an inventory available for citizens for reference. Currently, the inventory is on the making, as every time a new formality is available through the *Remotely Conducted Administrative Procedures* website it is registered. Even though the inventory of remote formalities is a good initiative, it is important to create a catalogue with all the administrative procedures in each ministry and public institution.

Creating an exhaustive inventory with all the formalities and information requirements to which businesses and citizens are subject to, is a necessary step in order to assess the regulatory stock and the administrative burdens correctly. The inventory must be updated, of easy access and free of charge.

Ex post *reviews of the stock of regulation*

"The evaluation of existing policies through *ex post* impact analysis is necessary to ensure that regulations are effective and efficient" (OECD, 2012[3]), nonetheless is one of the least developed practices in OECD countries. In fact, two-thirds of OECD countries do not have a formal mandate to carry out *ex post* evaluations (OECD, 2018[4]). Argentina has made efforts to implement *ex post* reviews of its regulations; however, they remain isolated and are not fully articulated.

Decree 891/2017 for Good Practices in Simplification mentions the need to evaluate the regulatory stock of the National Public Administration and to remove unnecessary regulations and to reduce the stock of administrative burdens. As in the other elements included in the decree, the institutional arrangement does not include a body or an institution in charge of overseeing the elaboration of these assessments.

On January 2018, the Argentinian government issued a decree urging entities of the public administration to eliminate regulations and administrative burdens that hinder production and business activity in the country and that urgently needed to be removed from the regulatory stock. *Decree 27/2018 for De-bureaucratisation and Simplification* introduced more than 100 elimination or modifications of regulations based on consultations made to institutions of the public administration.

Given that *Decree 27/2018* was a Decree of Necessity and Urgency (DNU), congress issued three laws to replace it. The laws gather most of the modifications included in the decree and are divided as follows:

- *Law 27.444 of Simplification and De-bureaucratization for the Productive Development of the Nation* focuses on regulations relevant for SMEs and businesses.
- *Law 27.445 of Simplification and De-bureaucratization for the Development of Infrastructure* addresses the administrative burden in ports, airports and roads.

- *Law 27.446 of Simplification and De-bureaucratization of the National Public Administration* includes modifications to the administration of public goods and the use of electronic files.

It is important to point out that most of the regulations included in the laws mentioned before represented outdated paragraphs or regulations, which in practice it is fair to assume that they generated few administrative burdens for citizens and businesses.

Note

[1] On March 2018, the Administrative Modernisation Secretariat updated the guidelines through *Resolution 19/2018*.

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Chapter 5. The governance of regulators in Argentina

This section starts explaining the seven OECD Best Practice Principles for Regulatory Policy, which are guidelines to strengthen the institutional design of economic regulators and thus, improve their performance. Based on the OECD principles, the section follows describing the main institutional arrangements of the economic regulators in Argentina. Afterwards, the section presents a general analysis of the degree by which institutional design and practices of Argentinian regulators are in line with the OECD principles.

The OECD principles of regulatory governance

The section presents a brief summary of the seven OECD Best Practice Principles for Regulatory Policy. A complete explanation of each principle with practical examples can be fully reviewed in OECD (2014[1]).

Role clarity

The basic idea of the *role clarity* principle is that an effective regulator must have clear objectives and clear functions, embedded in a complete regulatory framework and other policy instruments. These functions shall be sufficient enough to accomplish the institutional objectives that gave origin to the regulators' creation. This principle's main justification: only through clear objectives and statements can the institution achieve the expected results and goals.

These regulators' objectives should not be in conflict or competing with goals; they can otherwise undermine institutional performance. Only when clear benefits surpass potential costs should they be joined. However, in a situation where a regulator combines competing objectives, a regulatory framework and guidelines must be developed to help the institution trade off such functions. On the other hand, within the institution, these objectives should reflect separate and specific functions, goals, budget, personnel, etc. Therefore, a multi-purpose regulator would face important challenges in planning and executing all responsibilities and functions.

The legal framework should indicate the co-ordination mechanisms by which the regulator must co-operate with other institutions, such as congress, ministries, autonomous bodies, etc, on topics of shared responsibility. On the other hand, any co-operation agreement, memorandum of understanding or formal agreement should be published on the regulators' websites to promote transparency in the roles of the regulator.

Finally, clear separation of functions and co-ordination with ministries is a relevant issue. The role of the regulators with regard to supporting the policy objectives of ministries can vary across countries. A common practice, however, is the independence principle of regulators, which would limit the responsibility to supporting ministries on policy issues. Notwithstanding, support on policy issues is a fact and regulators' involvement in different stages of policy formulation is also desirable as co-ordination between promotion and regulation reduces uncertainty and misleading expectations over the role of regulated entities.

Preventing undue influence and maintaining trust

The notion of the principle is that regulators need to instil trust between stakeholders and institutions. In order to build this trust, close communication must be maintained with regulated entities and other parties; at the same time, the regulator must avoid any undue influence that may lead to regulatory capture.

The work of the regulators must be grounded in objectivity and impartiality. Thus, if there is a situation in which the scope of the regulator covers government and non-government firms, competitive neutrality is required to avoid distrust and reduce the risk of undue influence by public firms.

Formal and situation independence can promote objectivity and impartiality. Legal statutes can grant legal independence of regulators while independence can arise from institutional strength or the implementation of better practices. Both schemes face advantages and challenges. The choice between the two depends on several conditions, for example, the need to demonstrate independence, the dynamics of policy at the national level, the institutional strength of the country, etc.

Undue influence can arise from any governmental institution (ministries, congress, the executive, autonomous bodies, judiciary power, etc.), regulated entities or the public. The regulator must interact with these parties to deploy the regulatory process, co-ordinating on issues of shared responsibilities, consulting over regulatory projects and receiving feedback about the strategy and instruments it applies. Within this interaction, however, the regulator must pursue the institutional objective in the short and the long term, avoiding undue influence.

Avoiding regulatory capture and maintaining trust ensures that regulators, in fact, pursue their underlying policy objectives. There are several practices, which contribute to reduce the risk of regulatory capture and therefore create trust, for instance; the "revolving doors" restriction for officials working in regulated firms after certain periods of time; transparent communication between regulators and stakeholders; a defined agenda and official channels of communication; the degree of formal and legal independence; the implementation of regulatory impact assessment (RIA) and the consultation process for regulatory production; the selection process and the terms of the board members, etc. Principles such as the governing body of the regulator, the degree of independence, the fundraising scheme, the accountability obligations and the evaluation of the performance, also help limit the risk of regulatory capture.

Regulators can range from ministerial to autonomous bodies. Challenges linked to undue influence and trust are different in both situations. In principle, influence may be more probable between ministerial regulators in comparison with governing bodies, but the former may face challenges in a timely and effective manner. The election between a regulator within a ministry or an autonomous body is dependent on institutional arrangements and institutional capacity, not only linked to the regulator but also public entities.

Decision making and government body structure for independent regulators

The design of the governing body and the decision-making powers have an impact on the effectiveness of the regulators, the delivery of the regulatory policy and expected results of institutional objectives. Additionally, the governing body has an influence on the regulators' integrity as it can affect the risk of regulatory capture.

The governing body of the regulator can take different forms:

- The governance board model: oversight, strategic guidance and operational policy.
- The commission model: a board advises on regulatory decisions.
- The single member model: one individual takes the regulatory decisions.

The selection of the model *per se* has some effects on the effectiveness of the regulator. For instance, under certain conditions, a commission or a governance board model reduces the risk of regulatory capture and strengthens the decision making in comparison with the single member model.

Membership to the governing body is an important institutional arrangement that would go against regulatory capture and promote transparency. In order to go in this direction, the policies, criteria and selection process of the terms of appointment must be transparent. Government body members can be elected by public opposition contest or by direct appointment from an authority. Public opposition contest, however, creates greater trust if carried out fairly and inclusively.

Direct election of the board is another common practice of regulators. This type of governing body can be elected by a single authority or different public officials. The model requires, however, more transparency in the selection criteria as there could be bias in the process. For example, stakeholders, industry and ministry representation can be in conflict with the need to have board members with a technical background. Regulators must follow their institutional objectives but members can be influenced or have a biased opinion due to their public position. Thus, clear statements over objectives and goals, as well as guidelines to reduce conflict are advisable.

A multi-member model also has more institutional memory when the replacement is staggered. Due to this reason, changes in the board are less costly and less likely to completely modify the work of the regulator. This model can remove the institution from the political process. For instance, the appointment of board members can go beyond the period of the elected government in place

Regardless of the governing model, in general terms, corporate models have more accommodating features to enhance accountability, transparency, effectiveness, integrity and independence of the regulator. In contrast, a single member can be more adaptable to industry changes and more responsive. Regulatory capture is more challenging with a single member but institutional strength of the head ministry can be of support in this matter.

Accountability and transparency

This principle highlights the relevance of accountability and transparency for economic regulators. In fact, accountability and transparency are the foundations of trust but also a mechanism to align expectations between regulators and stakeholders. The main message of the principle is that compulsory or self-imposed practices in accountability and transparency promote the decision-making process and provide elements to lower the risk of regulatory capture.

Governments usually keep transparency and accountability obligations for all public entities, including the regulators. Notwithstanding, independent regulators should go beyond these duties in comparison with all public entities; thus, as long as regulators advance on independence or autonomy, they should increase their accountability and transparency practices to strengthen trust.

Accountability obligations could include the executive, congress, the public and stakeholders. Of course, the areas to be accountable for are not necessarily the same for all the stakeholders. For instance, the executive may focus on policy objectives, co-ordination with ministries and budget execution; congress would focus on policy objectives and budget execution; and the public and stakeholders may focus on policy objectives. In these topics, it is relevant that regulators publish their operational plans for each year, so the stakeholders can compare the planned agenda with the achieved results.

In perspective, transparency is a sort of accountability for the public and the value of the information published is worth the additional work involved. Thus, regulators should publish all possible information about their operation, including budget execution, industry statistics, annual working plans, meetings with stakeholders and their summaries, goals and objectives achieved, etc. This information should be readily accessible for most potential users and in manageable formats. It is also advisable that regulators pay attention to the information needed by users and include it in day-to-day statistics. Regulators should follow a transparency policy as a mechanism to obtain trust.

Engagement

The engagement principle refers to an integral policy of interacting with regulated entities and other stakeholders. The relevance of engaging with stakeholders is down to the fact that regulators learn from the industry how it works; from the public the effects of regulation; and from public entities how to work together.

Engagement with stakeholders is also a mechanism to produce quality regulation as they can provide feedback about a specific problem and proposals to solve them. Through engagement activities, regulators can improve the relationship with stakeholders, as they can offer opinions about potential problems and the effects of regulation as well as anticipate regulation and reduce implementation costs and uncertainty.

It is important that regulators commit to a policy on stakeholder engagement. Most regulators have active contact with their regulated firms and other actors but this is slightly different from a policy approach. A policy on stakeholder engagement requires objectives, a scheduled and planned agenda to discuss regulatory issues, analysis of the discussion topics, etc.

Engagement undertakings are highly recommended but regulators must take into account best practices in such activities to avoid risks of regulatory capture and conflict of interest. At the same time, regulators must be clear on the purpose of these activities, so the stakeholders fulfil their expectations. Finally, all exercises should fit the purpose; this means that activities need rationality criteria. For example, it may be excessive to undertake a complex, expensive and full consultation *in situ* for a proposed small regulation with few expected potential effects. Thus, consultation practices as early consultation, RIA and *ex post* consultation (under *ex post* evaluation activities) should be adopted as part of the engagement policy.

Funding

The principle has at least two branches. In the first place, funding is the channel that allows the regulator to achieve the goals according to objectives. On the other hand, funding sources can contribute to ensuring independence (mainly from the government but also from the regulated firms) in the decision-making process and the implementation of the regulation.

The number of funding sources available for the regulators must be objectives-planned and set with goals in mind. The funding for regulators must be sufficient to achieve the expected goals in the given timeline – which can include yearly or longer aims. In fact, the planning of goals and budget is closely aligned. Still, the budget should not be the main driver, as sometimes a tight budget is assigned to accomplish high goals. This does not otherwise mean that regulators should be granted substantial budgets. More than that, there must be a balance between budget and goals and the key is planning.

Sources of funding and easy access to funds are also a relevant issue for independence purposes. Independence relies on institutional arrangements between the regulators and the entities responsible for providing funding. These arrangements could be strong and it may not be necessary to separate the regulators' budget from other institutions, as is the case when the agency is part of a ministry or the former validates the budget. If the arrangements are strong over time, it is possible to maintain such structure but, if there is a perceived risk of change in policy, it may be sensible to separate the budget from the ministry through legal instruments. Assigning legal powers to the regulator to evaluate, propose, and implement the budget, helps to reduce the risk of capture and alleviate potential pressures to influence the regulator's decisions. Particular arrangements about the budget depend on country profiles and institutional capacity, but it is worth mentioning that self-budget planning and execution works towards independence.

Performance evaluation

This principle encourages regulators to conduct performance evaluation according to the underlying policy objectives. If the regulator does not evaluate its work and actions, it will never know if the effects of its intervention are in line with their objectives and if there has been a return on invested resources.

Performance evaluation allows regulators to strengthen the activities or actions that contribute the most to their goals and modify those with poor effects. Due to the relevance of the performance evaluation, it is important to conduct these exercises periodically. The frequency depends on the relevance of the policy and the type of evaluation. For instance, an evaluation of performance indicators regarding outcomes can be launched on a yearly basis, as they need "simple" statistical analysis, which is not as time-consuming. On the other hand, the actual impact or effects of the regulatory decisions require more complex analysis and advanced tools. At the same time, identification of the final effects may be blurred in the early stages of implementation.

Finally, the publication of the results is as important as the launch of performance evaluation activities. It helps with accountability and transparency issues.

Institutional practices of regulators in Argentina

The section will present to what degree Argentinian regulator practices are consistent with OECD principles on regulators. The regulators that were analysed on the grounds of the institutional arrangements are the following:

- National Electricity Regulator.
- National Gas Regulator.
- National Communications Entity.

Role clarity

National Electricity Regulator

Law No. 24.065 of the Electric Power Regime created the National Electricity Regulator (ENRE) (Article 54) as a self-governed body with legal capacity in public and private law, own assets and capacity to approve its organisation chart (Article 55). The law also indicates in Article 2 the objectives that ENRE must accomplish, and Article 56 details ENRE's functions and faculties. This law, however, does not include indications

regarding co-ordination with other public entities such as the National Commission for the Competition Protection, the Government Secretariat of Energy, amongst others.

The objectives listed in Article 2 include: i) protection of user rights; ii) promotion of demand, competitiveness and investments; iii) promotion of non-discriminatory transport and distribution access and usage of electricity services; iv) encouragement of production, transport, distribution and efficient use of electricity, based on the establishment of tariffs; and v) promotion of investments according to competitiveness.

The functions indicated in Article 56 are linked with the objectives indicated previously. In general terms, they include actions to: enforce the law; draft regulations; prevent anticompetitive conducts; establish tariffs; publish general principles for contracts; establish the foundations and conditions to grant concessions; conduct public tenders; watch over property protection, environment and public security in construction projects; publish information; impose fines; amongst others.

On the other hand, *National Decree No. 1.398/92* in Article 1 indicates that the former Secretary of Electric Energy has to take into account the natural monopoly of the distribution of electricity when establishing specific regulations and when ENRE has to perform its functions.

National Gas Regulator

Law No. 24.076 of Natural Gas (Art. 50) created the National Gas Regulator (ENARGAS) as a self-governed institution with legal capacity and own assets – similar to ENRE. With few exemptions, the objectives of ENARGAS, according to Article 2 are the same as the objectives of ENRE in the corresponding law. Accordingly, functions stated in Article 52 are stated to comply with the objectives. *Decree 1.738/92*, on the other hand, issued the bylaw of *Law No. 24.076*.

National Entity of Telecommunications

Decree 267/2015 created the National Communications Agency (ENACOM) on December 2015 as a self-governed body with legal capacity, decentralised from the former Ministry of Communications. The decree grants ENACOM all the functions listed in *Laws No. 26.522 of Audio-visual and Communication Services* and *No. 27.078 of Information and Communications Technologies*, as well as their subordinate regulations. Thus, ENACOM holds all the competencies and functions that such norms and its regulations assign to the Federal Regulatory Authority of Audio-Visual Communication Services and Federal Authority of Information and Communications Technologies. The decree also includes detailed modifications that must be made both to *Law No. 26.522* and *Law 27.078*. At the time of writing this report, the laws are yet to be modified.

ENACOM then operates with two laws, which were updated by a decree. ENACOM, therefore, is issuing new rules until a new integrated law emerges. For instance, ENACOM is updating the regulation on fines and quality control, and customer regulation, amongst others. Indeed, in 2016, a new law was drafted based on the consultation process but it is in the process of being discussed in congress.

Preventing undue influence and maintaining trust

Decisions based on evidence, relationships with stakeholders, transparency and accountability are some of the most important elements when evaluating trust. In Argentina, some of these practices are common for all public institutions as they share the same legal requirements; specific regulations or practices also exist for each regulator.

Regarding public information, a general law regulates the rights of information access, which states the general principles of public participation and access and transparency of the public administration. More specifically, *Decree 1.172/2003* publishes bylaws on public hearings from the side of the executive power, public participation on the elaboration of norms, public information access, and open meetings with regulatory bodies, amongst others (see Chapter 3 for more details). In addition to the general regulation on public hearings, some of the legal instruments which created the economic regulators specify under which situations public hearings must be conducted. For example, the laws creating ENRE and ENARGAS specify guidelines for public hearings. In contrast, the legal instruments that created ENACOM do not have specific guidelines to conduct public hearings.

For complementary information on this principle's practices, see the engagement section below, in which practices and relations with stakeholders are indicated.

National Electricity Regulator

The legal powers *Law No. 24.065 of the Electric Power Regime* grants to ENRE as a self-governed organisation with institutional boundaries can provide the foundations to build trust as an independent regulator.

Defining serving terms for members of the governing body of regulators as fixed and in staggered periods can reduce the risk of regulatory capture and appointments should last beyond presidential periods. In the case of ENRE, governing bodies are designated for five years and the president is elected for a four-year term. The members of the board cannot have direct or indirect interests and relations with the electricity firms. There is also a three-year period preventing an individual from working in the industry before or after holding a public position in ENRE.

In the case of communication with stakeholders, *Law No. 24.065* indicates the situations for which ENRE must conduct public hearings, such as some merger cases, tariffs controversies and competition issues, amongst others (see Chapter 3 for more details).

Direct intervention of ministries in the policy space of regulators can undermine trust in the regulator. *Decree 134/2015* issued in 2015 declared the energy sector in emergency. This decree provided instructions to the Ministry of Energy and Mining to implement actions to improve quality and ensure the supply of public services in technical and economic conditions. The intervention of the ministry included the generation, transport and distribution of electricity. A decree of this nature granted the executive power with faculties to intervene ENRE, narrowing its capacity as a regulatory authority.

National Gas Regulator

Law No. 24.076 of Natural Gas grants ENARGAS a similar institutional design as ENRE, including the status of a self-governed body, the arrangements for the board of the institution, and the system for board member appointments, amongst other. These legal instruments seem to be consistent with OECD principles on the governance of regulators,

but any potential risk in the institutional design that threatens independence should be identified and avoided, or limited.

In the case of ENARGAS, through *Decree 571/2007* issued in 2017, the President of Argentina intervened, taking control of the regulator's functions and responsibilities. The arguments put forth included defective administrative reporting, serious faults and other misconducts by ENARGAS. The decree made explicit that the intervention was planned for 180 days, with possibility of extension. The short-term intervention lasted 10 years, however, until the publication of *Decree 594/2017* issued in 2017, which declared the end of the intervention and appointed the vice president of ENARGAS and other senior officials.

In order to prevent undue influence and maintain trust, regulators need to have, amongst other things, clear objectives, a solid regulatory and institutional framework to dispatch its function effectively and efficiently, and an institutional and regulatory landscape to resolve disputes and misconducts under the rule of law. Interventions of a nature similar to the one described above may have largely negative effects over the performance of the institutions, as well as in stakeholders' perception.

National Entity of Telecommunications

The institutional design of ENACOM as a self-governed body, with a board to define objectives and functions, provides a relevant foundation to build trust and reduce potential undue influence.

As with other regulators, in addition to the general regulation on public hearings (*Decree 1.172/2003*) ENACOM also follows specific statutes stated in *Law 26.522*. ENACOM, on the other hand, organises consultation fora for draft regulation within the framework of *Law 26.522* and *Law 27.078*.

Decision making and government body structure for independent regulators

National Electricity Regulator

The governing body of ENRE has 5 members, one of which is the President, one the Vice-president and the remaining official chairpersons (Article 57 of *Law No. 24.065*). The executive power appoints these members according to their technical and professional background for 5 years organised in staggered periods, which can be renewed indefinitely – 2 of them proposed by the Federal Council of Electric Energy (Article 58 of *Law No. 24.065*).

These members, according to Article 59 of *Law No. 24.065* can only work for ENRE, and are banned from other activities. They can only be removed by the executive power, with a well-founded justification. However, the removal order will go to a congress commission first, which will give an opinion.

National Gas Regulator

According to Article 54 of *Law 24.076*, the governing body of ENARGAS is formed by 5 members, one of which would be the president, one the vice-president and the remaining 3, chair officials. As with ENRE, members of the governing body are elected according to their technical profile for five years (Art. 54). Again, members have staggered periods and are banned from working somewhere else (Art. 55).

These legal statutes, which seem to be consistent with OECD principles on the governance of regulators, were overturned when the president intervened ENARGAS.

National Entity of Telecommunications

Article 5 of *Decree 267/2015* establishes that seven members form the board of ENACOM. Three members are directors appointed by the President of Argentina and three more selected by the Two-Chamber System of Promotion and Follow-Up of Audio-Visual Communications and the Technologies of Telecommunications and Digitalization; the chambers themselves are elected by parliamentarian teams. Finally, according to *Decree 267/2015*, the President of Argentina elects the President of ENACOM.

The members of the board are appointed for a four-year period and can be re-elected for one additional mandate. The President of Argentina, however, can depose members directly and without expressing the cause – Article 5 of *Decree 267/2015*. Finally, the board can hold a session with four members.

Accountability and transparency

In Argentina, internal control relies on *Law No. 24.156 of Financial Administration and Control Systems of the National Public Sector*. This law is compulsory for all public entities, including autocratic bodies, such as the regulators analysed in this chapter (Article 8). The powers under the umbrella of this law include controlling budget (technical regulations, governing body, organisation, design and execution), public credit, internal and external control and accountability.

The institution in charge of internal control is the General Administrator of the Nation, according to Article 100 of *Law No. 24.156*. A general administrator and three deputy administrators head the office.

On the other hand, *Law No. 24.156* also creates the General Audit Office of the Nation, as a National Congress-dependent entity with the responsibility of internal and external control of the public sector. Its responsibility is the external control of the budget, the economy, treasury, assets and legal administration after their execution. Seven professional members with relevant experience in budget and control form this body – designed by the chambers of congress.

Regarding transparency obligations, *Law 27.275 of Right to Access Public Information* establishes the duties that public entities must comply with on this matter. For instance, the basic information public bodies must publish on the web portal includes: i) organisation charts and functions; ii) salaries and their components for all staff; iii) planned and spent budget; iv) fund transfers; v) audit and evaluation reports; vi) services provided and accession protocols; vii) means to attend public information requests; viii) permits, concession documents; etc. Furthermore, the law establishes that all information in the hands of the state is public with specifically indicated exceptions.

Additionally, ENRE publishes, a yearly report about discharge of duties and sector performance. The report may include regulatory guidelines, a market outlook, tariff summary, quality control results, inspections, firms' shareholder follow-up, institutional relations and communications, audit outcomes, amongst others. ENARGAS also publishes a yearly report about its activities, users, the market structure, financial statements, licensees' holders, and the transport system, amongst others. Finally, the administrative units of ENACOM publish monthly reports about the main activities they perform and some related indicators.

Engagement

In Argentina, public hearings constitute a channel for society to participate in the decision-making process. Public hearings are public participation procedures in which the authority provides formal spaces of communication in which stakeholders may express opinions about particular interests.

Decree 1.172/2003 includes the regulation of public hearings, which defines actors, roles, timing, budget responsibilities, stages, protocols, formats and procedures. The decree also publishes the regulation of the public participation of norms, as an institutional mechanism to express opinions on regards of drafted administrative norms and laws that will present the executive before congress. In this regulation, it stands out that any person can formally request the authority to launch a public participation procedure of norms – implying that not all regulation proposals may be subject to a consultation process (see Chapter 3 for more details).

The decree also defined the regulation to publish the interests and opinions of any person within the public hearing, with the aim to influence functions and decisions of public entities, as economic regulators. The basic principle of this regulation is that all information recorded is public and must be free to access, updated daily and published on web portals.

In addition to public hearings, ENRE, ENARGAS and ENACOM hold meetings with different stakeholders. For instance, ENACOM has monthly consultations with consumer commissions but there is no evidence of systematic meetings beyond public hearings with regulated firms with protocols to ensure transparency. In ENRE and ENARGAS, apart from public hearings which follow transparency practices, there is no evidence of formal meetings within a planned agenda with regulated entities or other stakeholders.

Funding

National Electricity Regulator

Law No. 24.065 (Article 65) grant ENRE powers to draft the annual budget, including income, spending and investments – ENRE also has the faculty to administrate its annual budget and the public audit office has the power to oversee the execution (Article 64). ENRE has the following sources of income: i) inspection and control rates; ii) subsidies and other transferences; iii) resources or assets assigned by regulation; iv) resources from fines and seizures; and v) interest and other incomes from the administration of own funds. The resources collected, however, go to the treasury and the ENRE has to request them every three months. The treasury, on the other hand, can fix budget caps and goals, as well as authorise expenses not previously approved.

Producers, transporters and distributors will pay yearly and in advance an individualised inspection and control rate, defined by ENRE. *Law No. 24.065* indicates the formula to calculate the rate, which takes into account the expenses of the regulators and the income of the regulated businesses.

National Gas Regulator

Law No. 24.076 establishes much the same provisions for ENARGAS as *Law 24.065* does for ENRE in terms of funding and budgeting, as both grant the same powers for budget consolidation and similar sources of funding. As with ENRE, ENARGAS has to request the funding from the treasury on a quarterly basis.

National Entity of Telecommunications

Article 4 of *Decree 267/2015* defines the funding sources for ENACOM. They include: i) obligations, fees and rights described in *Laws No. 26.522* and *No. 27.078*; ii) resources from fines; iii) donations and subsidies granted; iv) fiscal resources from the national treasure; v) administrative fees; and vi) other legal incomes. The article indicates that fines imposed on concession holders cannot be interchangeable by publicity, commercial spaces or any other type of compensation.

According to the ENACOM, 79% of its funding comes from the telecom industry, 19% from the audio-visual and the remaining from fines.

Performance evaluation

Establishing and publishing indicators varies across regulators in Argentina. In general, they publish reports over indicators, mainly regarding their yearly operation such as financial execution, administrative compliance, activities undertaken, etc. However, performance indicators measuring the progress in achieving the policy objectives of the regulator are not a common practice. Instead, economic regulators such as ENARGAS, ENRE and ENACOM produce and publish a monthly report with a summary of the most relevant activities and some indicators. These can be:

- input indicators
- process indicators
- output indicators
- financial indicators.

ENRE's indicators focus on tariffs, quality control, inspections, institutional communications, audit outcomes, quality service and budget execution, amongst others. ENARGAS also publishes indicators about activities performed, users, financial outcomes, licensees' holders, quality of service, complaints, personnel performance, etc. ENACOM also publishes indicators about conflicts, agreements, services, user assistance, authorisations, and registries, amongst others.

In summary, the work on different levels and types of indicators from the side of the economic regulators is extensive but all of the information they produce regarding the evaluation of the institutional performance must be upgraded and categorised.

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Chapter 6. Multi-level regulatory governance in Argentina

This chapter analyses the current policies applied by the Government of Argentina to promote regulatory coherence with subnational regulation, and policies to support the implementation of regulatory policies by local governments in Argentina. For this purpose, the regulatory practices of the City and the Province of Buenos Aires are assessed, and case studies of these governments added in this chapter for clarification. Furthermore, it assesses Argentina's practices regarding international regulatory co-operation.

The challenges of multi-level regulatory governance

Regulatory fragmentation poses challenges for citizens and businesses in their everyday life given the multiplicity of layers of government and actors that produce and enforce a given regulation. A wide array of detailed and cumbersome legal instruments might hinder the interaction between public institutions at different levels of government, especially if there is no clear and straightforward mechanism to solve multi-level discrepancies. Furthermore, the complexity of a regulatory system increases in a more decentralised system composed of more layers of regulatory actors (Rodrigo, Allio and Andres-Amo, 2009[1]).

Central, regional and local governments co-exist with their own set of attributions with different layers of government having the capacity to design, implement and enforce regulation. The challenges of a multi-level regulatory framework include duplicated or overlapping rules, low-quality regulation and uneven enforcement. It also places unnecessary burdens on citizens' activities as well as trade, investment and entrepreneurship influencing negatively on the performance of economies and therefore affecting growth. The 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance* addresses multi-level regulatory governance in two items: coherence and co-ordination; and regulatory management capacities at the subnational level (OECD, 2012[2]).

Distribution of regulatory attributions within the Argentinian territory

Argentina is a federal republic with three levels of government all of which have regulatory attributions; national (1), provincial (23) and municipal (2 218) as well as the Autonomous City of Buenos Aires (CABA) (OECD, 2016[3]). Indeed, the regulatory powers of all levels of government are enshrined in several legal provisions, the National Constitution, the corresponding Constitutions of the Provinces and municipal charters.

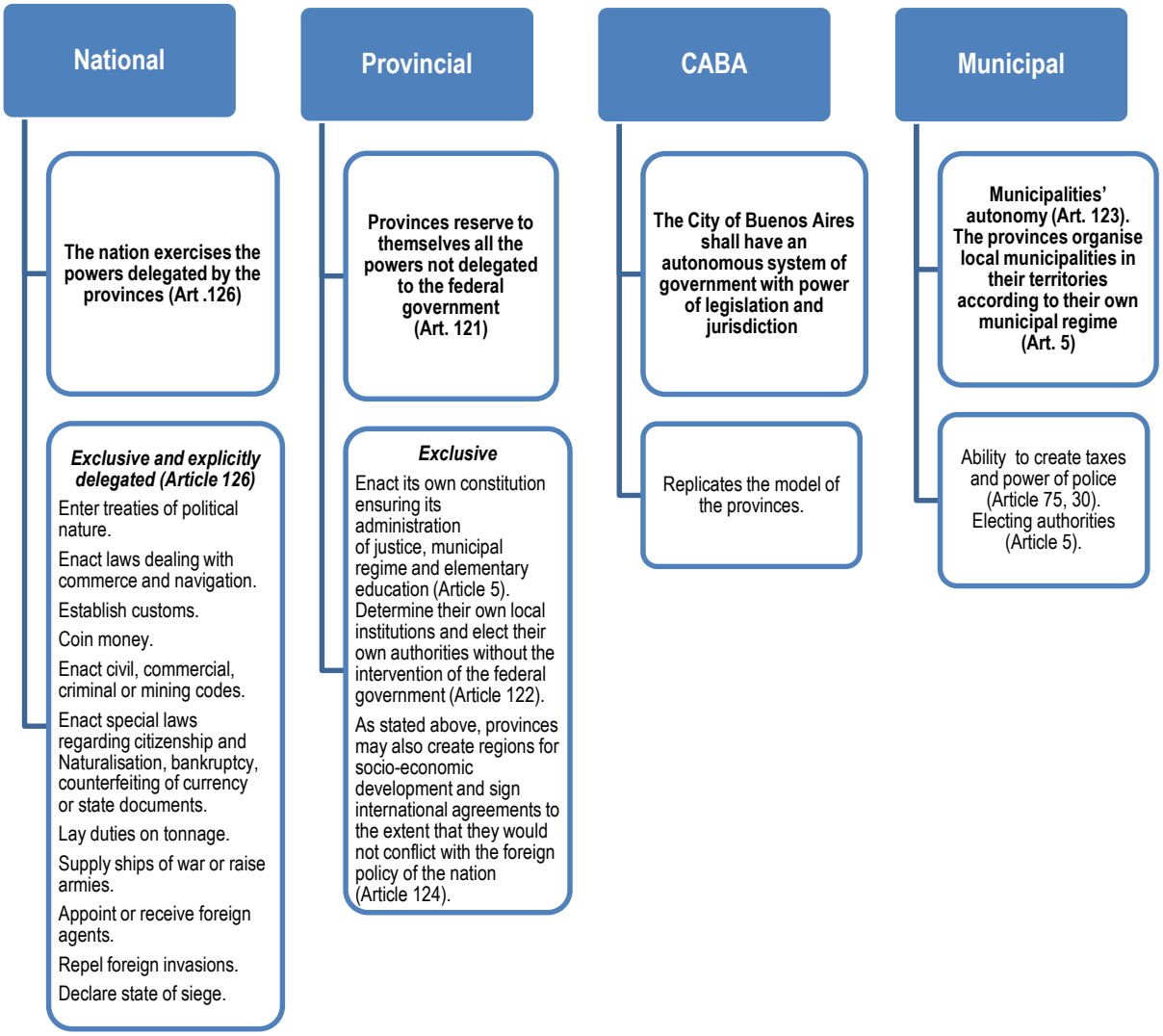
The national constitution specifies that provinces have their own legislative, executive and judicial systems and the power to elect their authorities and issue their own constitutions. Furthermore, the premise regarding the distribution of regulatory powers is that all provinces have the powers that have not been explicitly delegated to the federal level in the constitution (see Figure 6.1).

Provinces may create regions for socio-economic development or, with the knowledge of the National Congress, sign international agreements, to the extent that they would not conflict with the powers explicitly delegated to the national government (Figure 6.1). Provinces manage natural resources in their corresponding territories and they may be responsible for secondary education. As for municipalities, the national constitution grants them autonomy for the following matters: electing their authorities, police authority and the power to create taxes.

Consequently, Argentinian national and subnational levels of governments have exclusive as well as shared regulatory powers. In some particular cases, this complexity causes overlapping of regulation and competencies increasing the challenges of regulatory fragmentation for citizens and businesses. Moreover, in case of overlap or contesting regulation, there is currently no established conflict resolution procedure amongst the national and subnational levels of government apart from court appeals. For example, in imposing local taxes and establishing environmental regulation.

Shared competencies between the federal and provincial governments include college education, healthcare, housing and energy. As for municipalities, they have both exclusive and shared competencies: exclusive powers for municipalities account waste management, road construction, sewerage, markets and cemeteries, public transportation and public roads regulation; shared competencies include primary education, primary healthcare, water and sewage, construction and maintenance for regional roads (OECD, 2016[3]). See Figure 6.1 for an explanation of the distribution of attributions as per the national constitution.

Figure 6.1. Examples of attributions and competencies in the Argentinian National Constitution



Notes: This figure illustrates attributions according to Argentina's national constitution. These are not the totality of the attributions. In the case of municipalities, the attributions depend on the province they depend on and each municipal government develops their own municipal charter.
Source: Adapted from Presidencia de la Nación (n.d.[5]), *Constitución Nacional Argentina*, https://www.casarosada.gob.ar/images/stories/constitucion-nacional-argentina.pdf. (accessed on 28 July 2018).

Box 6.1. Historical background of Argentina's federalism

The Viceroy of Buenos Aires was the Spanish central authority during the Río de la Plata Viceroyalty that lasted from 1776 to 1810. Argentina gained independence in 1816 and the viceroy disappeared which allowed for the provinces to develop their own institutional arrangements. Since then, two attempts were made to enact a national constitution: in 1819 and in 1826. Both constitutions were rejected by the majority of the provinces, which continued to establish its own independence by enacting provincial constitutional documents. This early subnational constitutionalism is evidence of the high degree of provinces' autonomy installed for more than 40 years (1810-53).

A national constitution was adopted in 1853, creating the "Argentinian confederation". In this new constitution, the provinces delegated some of their powers while reserving other powers for themselves. It was enshrined in Article 121 (pillar for Argentinian federalism) where there is an explicit recognition of the pre-existence of the provinces' governmental powers stated as follows: "the provinces retain all powers not delegated by this Constitution to the Federal Government, and those they have expressly reserved by special covenant at the time of their incorporation".

Source: Ramirez Calvo (2012[4]), "Sub-national constitutionalism in Argentina. An overview", *Perspectives on Federalism*, https://www.researchgate.net/publication/256088070_Subnational_Constitutionalism_in_Argentina (accessed on 28 June 2018).

Co-ordinating national and subnational levels of government

Co-ordination is one of the building blocks for the attainment of regulatory goals. The 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance* states that countries should "promote regulatory coherence through co-ordination mechanisms between the supranational, national and subnational levels of government. As an important component of co-ordination, better communication between levels of governments may help to prevent conflicts and duplication of regulation" (OECD, 2012[2]). Also, co-ordination can provide a platform to share experiences and innovate regarding good regulatory practices at the subnational level and help increase expertise and deal with common problems.

Even when Argentina has not yet established a fit-for-purpose co-ordination mechanism for regulatory matters, the government has set up sectoral initiatives for co-ordination purposes including national councils, policy alignment programmes and/or referential joint websites. The most common tool used is sectoral ad hoc federal councils that are established to improve sectoral policies, concerning issues like the modernisation of the state, energy, environment or human health. However, it is important to mention that the adhesion to a federal council on behalf of the provinces is voluntary. Consequently, CABA and the provinces may choose not to participate in these co-ordination platforms.

The composition and functions of federal councils are given by different laws, decrees, resolutions and/or constitutive dispositions that create them. It is worth noting that depending on the council, decisions and recommendations may be advisory or binding.

For example, the government has established the Federal Council for Modernisation where the members share good practices for the modernisation of the Argentinian state (see Box 6.2). However, subnational governments are not obliged to implement the

decisions or recommendations adopted in their jurisdictions. In that sense, the Federal Council of Energy is another example of non-binding decisions for members.

Box 6.2. The Federal Council of Modernisation

Modernisation of the Argentinian state as a national priority

In 2015, a programme for public sector modernisation was implemented at the national level. The programme stemmed from the fact that 94% of municipalities did not offer digital administrative procedures or access to public information. Also, only 165 out of 1 328 administrative procedures at the subnational level of government were digital and a third of Argentinians had no Internet access.

The Secretariat of Modernisation was created to lead the implementation of the programme for which the main objective was to create a more dynamic public sector, increasing transparency, implementing digital services and e-government, and guaranteeing access to public information. Provinces have their own modernisation officials, who implement provincial strategies for modernisation and support local municipalities.

Though it is soon to measure the results of the modernisation plan, Argentina has increased 34 places and ranks 17th in the latest Global Open Data Index. To date, 70% of provinces have signed the Federal Commitment for the Modernisation of the State and more than 1 000 administrative procedures and formalities have been made available online.

The federal council as a means for policy and regulatory co-ordination in Argentina

The federal councils were established as discussion fora to improve sectoral policies by enhancing co-ordination and co-operation between the national and provincial governments.

The Federal Civil Service Council was created in 1992 to collaborate in planning, co-ordinating and implementing civil service policies. Due to the national modernisation strategy, this council was relaunched in 2016 as the Federal Modernisation Council.

The Federal Modernisation Council aims at simplifying administrative procedures by digitising and streamlining internal and external administrative procedures to facilitate the governments' relations with citizens and businesses as well as to oversee the implementation of the Digital Country (*País Digital*) programme. The council is chaired by the Minister of Modernisation and composed of representatives of the provinces and CABA. The council's members meet at assemblies four times a year to discuss issues relating administrative simplification by means of digitising administrative procedures, formalities and services, as well as to share good practices on the governments' management of processes and systems.

At the time of writing of this report, the council was analysing the draft of the national law for the modernisation of the Argentinian state (*Anteproyecto de Ley de Modernización del Estado*).

Source: Gobierno de Argentina (2018[6]), *Compromiso Federal para la Modernización del Estado*, https://www.argentina.gob.ar/sites/default/files/compromiso_federal_para_la_modernizacion_del_estado_0.pdf (accessed on 07 February 2019).

On the other hand, the Federal Council on Environment aims to reach binding decisions regarding the development of environmental policies. In 2002, the national government enacted *Law No. 25.675 of National Environmental Policy* by which this federal council was established. According to the national constitution, provinces can manage their own natural resources and, in that sense, members are obliged to adopt the regulations reached by the council's general assembly when a resolution is issued. Table 6.1 below shows examples of federal councils and whether their decisions are binding or advisory.

Table 6.1. Federal councils in Argentina

Nature of federal council's decisions and recommendations

Federal councils	Year of creation	Binding	Advisory
Environment	2002	X	
Modernisation	2016		X
Health	1981		X
Education	2006	X	
Water resources	2009		X
Housing	1995		X
Energy	2017		X
Taxes	1988	X	
Consumer protection	2017		X
Small and medium-sized enterprises	2016		X

In 2017, a co-operation agreement was signed by the federal government, the provinces and CABA to establish the Bulletin Network. The aim of the network is to strengthen co-operation and improve transparency by facilitating access to regulations via the official bulletins where regulation is published by each level of government. This network also serves as a discussion forum to promote the exchange of experiences regarding information and communication strategies (Red de Boletines Argentinos, 2018[7]).

Regulatory policy, institutions and tools at the subnational level

The 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance* invites governments to "foster the development of regulatory management capacity and performance at subnational levels of government". The rationale behind this recommendation is aimed at reducing regulatory costs and barriers at the local level which can limit competition and impede investment, business growth and job creation (OECD, 2012[2]).

In that sense, recommendation 12 of the 2014 *OECD Recommendation on Effective Public Investment across Levels of Government* (see Box 6.3) recognises the importance of developing quality and consistent regulatory systems across levels of government. Coherent regulatory systems may enhance public and private investment at the subnational level by reducing the costs of overlapping or contradictory regulations at the different levels of government. While it is true that subnational governments should be able to implement regulation from higher levels of government effectively, these subnational governments should also have the capacity to define and implement their own strategy for regulatory management (OECD, 2014[8]).

Box 6.3. Recommendation of the Council on Effective Public Investment across Levels of Government

The purpose of the recommendation is to help governments at all levels assess the strengths and weaknesses of their public investment capacity; recommendation no. 12 highlights the importance of regulatory quality. The recommendation reads as follows:

A. Co-ordinate public investment across levels of government and policies.

1. Invest using an integrated strategy tailored to different places.
2. Adopt effective instruments for co-ordinating across national and subnational levels of government.
3. Co-ordinate horizontally among subnational governments to invest at the relevant scale.

B. Strengthen capacities for public investment and promote policy learning at all levels of government.

4. Assess upfront the long-term impacts and risks of public investment.
5. Engage with stakeholders throughout the investment cycle.
6. Mobilise private actors and financing institutions to diversify sources of funding and strengthen capacities.
7. Reinforce the expertise of public officials and institutions involved in public investment.
8. Focus on results and promote learning from experience.

C. Ensure proper framework conditions for public investment at all levels of government.

9. Develop a fiscal framework adapted to the investment objectives pursued.
10. Require sound and transparent financial management at all levels of government.
11. Promote transparency and strategic use of public procurement at all levels of government.
12. Strive for quality and consistency in regulatory systems across levels of government.

Source: OECD (2012[2]), *Recommendation of the Council on Regulatory Policy and Governance*, http://dx.doi.org/10.1787/9789264209022-en.

In Argentina, subnational levels of government have their own regulatory powers and, in that sense, their own rulemaking process which comprises a heterogeneous implementation of regulatory management tools. For the purpose of the present review, the extent to which CABA and the Province of Buenos Aires (PBA) apply regulatory tools in their rulemaking process will be assessed; it is worth noting that the results cannot be generalised to all subnational levels of governments in Argentina. Nevertheless,

the results provide relevant information in terms of the approach taken and how the current efforts are set on implementing simplification initiatives to manage the current stock of regulation.

Case study: City of Buenos Aires

Economic background

CABA is the capital of Argentina and is located in the country's central-eastern region. In terms of population, it is the most populated city in Argentina with 2 890 151 inhabitants (INDEC, 2010[9]) and one of the most populated cities in Latin America.

The Port of CABA is the biggest in South America and represents the capital's financial, industrial and commercial centre. The importance of the Port for Argentina's national economy is undeniable due to Argentina's high production and export of agricultural commodities. A large part of domestic and international trade activities depends on this port, as it connects Argentina with Brazil, Paraguay and Uruguay.

Economic activities are diverse and include manufacturing and processing products such as grain, meat, dairy, leather, wool and tobacco, as well as oil refining, metalworking, machine building, and production of automobiles, textiles, clothing, beverages and chemicals. Buenos Aires also has a diverse service sector that comprises advertising, tourism, construction and real estate (WPS, 2018[10]).

CABA remains the most significant urban area for economic activities in Argentina. The GGP of CABA makes up 20% of Argentina's total gross domestic product (GDP). Also, CABA's per capita global gross profit (GGP) is more than three times the average per capita GGP compared to the rest of the country (CABA, 2018[11]).

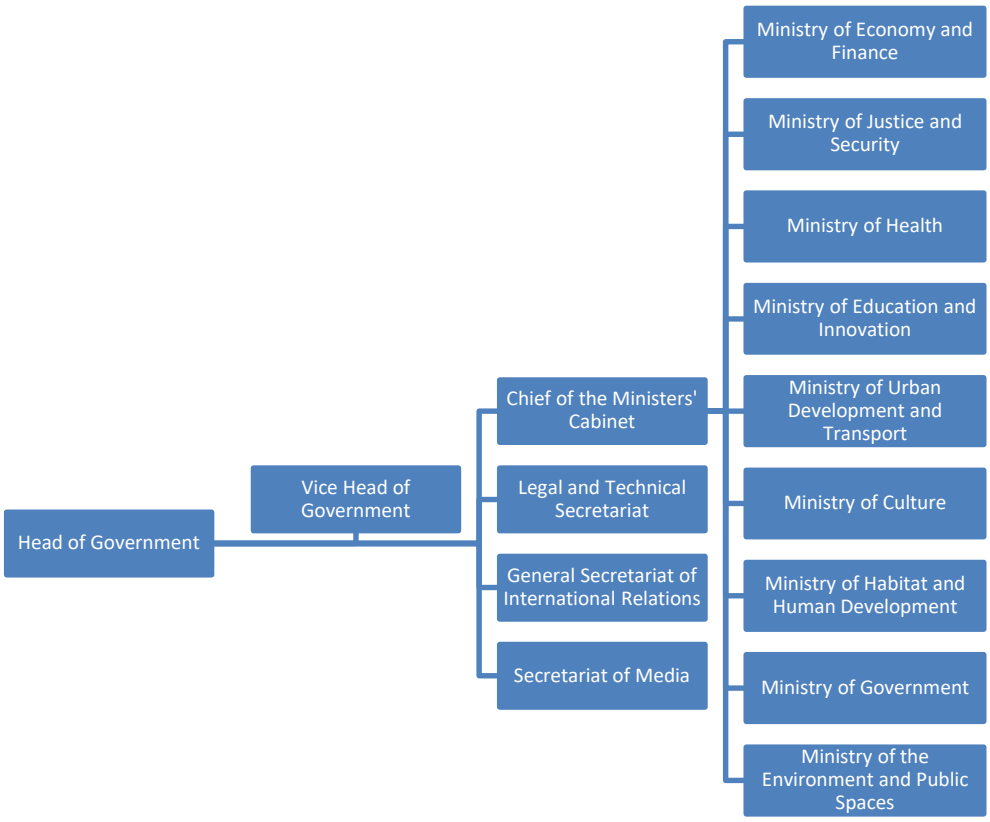
Government structure and rulemaking process

Since 1996, CABA has its own constitution establishing the government structure, which is similar to the other provinces of Argentina. Indeed, following the premise explained in prior sections, CABA also has all powers not explicitly given to the federal government. Article 129 of the federal Constitution recognises CABA's autonomous system of government, with its own executive, legislative and judicial branches of government. CABA is divided into 15 communes all of which have regulatory competencies and are subdivided into 48 neighbourhoods (Comunas CABA, 2018[12]).

CABA's executive branch is represented by the head of government who is elected by popular vote for a four-year period with the possibility of re-election. The executive has nine ministries and three secretariats (see Figure 6.2). It has a vice head of government who is also the head of the legislative branch. The legislative power is exercised by the Legislature of CABA, a unicameral assembly with 60 congress members. Finally, the judicial branch is composed of the High Tribunal of Justice, City Council of the Judiciary, Public Ministry and the common courts.

Article 85 of CABA's constitution provides that regulation can be issued by the legislative branch, the executive branch, the ombudsman and the communes. In that sense, all levels of government have regulatory powers and responsibilities which already signals the importance of having quality control mechanisms to avoid overlaps or unnecessary regulation.

Figure 6.2. CABA's executive branch



Source: CABA (2018[13]), *Buenos Aires Ciudad - Organigrama*, http://www.buenosaires.gob.ar/organigrama/?menu_id=505 (accessed on 25 July 2018).

Law No. 1.777 of Organic Law of Communes and CABA's constitution provide exclusive and shared powers between CABA's government and its communes. In case of doubt of the extension of the exclusive and shared powers, regulatory powers must be interpreted in favour of the communes (Article 9 of the *Law No. 1.777*). The executive branch shall not exercise the exclusive powers of the communes.

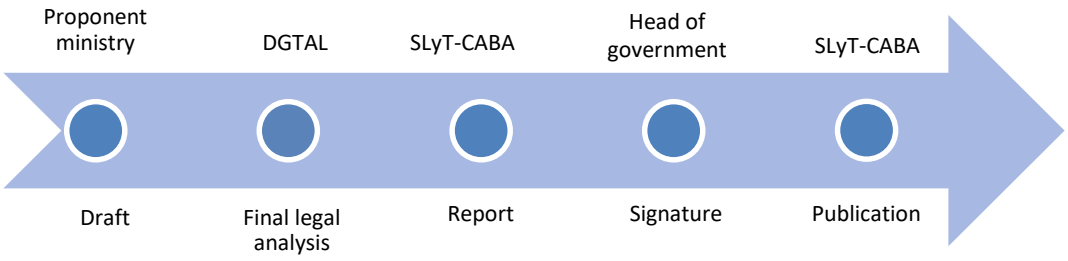
The Chief of the Government of the Executive Power, the heads of ministries and secretariats, and their dependent bodies can issue regulations, as well as autocratic entities and state societies. Technical, administrative and legal general directions or equivalencies in each ministry have the competency to support and advise the ministers and dependent bodies in technical and legal issues of regulations. For the Chief of Government, the Legal and Technical Secretariat exert this competency.

Previous to the signing of draft laws and decrees, the SECLYT-CABA conducts informal meetings with different General Legal, Technical and Administrative Directorates of the Autonomous City of Buenos Aire DGTAL and with areas in charge of regulatory projects to be signed by the Chief of the Government with the objective of offering support in legal and technical aspects to ensure their application.

The regulatory process in the city depends on two variables. The first refers to the signing of the regulation (Chief of Government, ministerial authorities, autocratic entities or state societies). The second depends on the potential impact of the regulation on economic activities.

Figure 6.3 describes the regulatory process if the Chief of Government is the signer. If the signer is a minister, a secretary or another hierarchical authority with competency, the process is: the area drafts the regulation, the DGTAL or legal area conducts the technical and legal analysis and then, the project is signed by the authority.

Figure 6.3. CABA's procedure for issuing regulations signed by the Chief of the Government



If the regulation has an impact on economic activities, previous to the signing, the Deputy Secretariat of Economic Development intervenes, according to the competencies declared in *Joint Resolution No. RESFC-2018-14-MJGGC* and the procedures approved by *Resolution No. 2.440-MEFGC-18* and *Resolution No. 169-SSDECO-18*.

All the documents issued as draft regulatory projects go through the electronic system SADE, so they are registered and can be monitored. It is worth mentioning that these legal and technical analyses are for internal use and are not published or accessible to the public.

The SLyT-CABA is also in charge of the official press bulletins of the CABA, where all regulations must be published to be effective.

Law No. 5.360 of Ministries of the City of Buenos Aires provides that the SLyT-CABA assists the executive branch in verifying technical and legal aspects of the draft of regulations proposed by ministries. However, the SLyT-CABA's opinions are advisory and are given when requested by ministries. Therefore, ministries are not legally obliged to either request or consider the SLyT-CABA's opinion but might occur in practice.

Certain ministries are implementing measures to improve the rulemaking process. Recently, the Ministry of Economy and Finance modified its organisational structure and charged the Under-Secretariat of Economic Development with promoting policies aimed at having a clear and efficient legal framework for economic activities, and to supervise CABA's economic-related regulatory policy.

Use of regulatory management tools (regulatory impact assessment, consultation, administrative simplification and centralised registries)

In terms of *ex ante* regulatory impact assessment (see Chapter 3 for a detailed explanation on *ex ante* assessment of regulation in Argentina), CABA carries out systematic legal analysis of regulatory proposals but seldom performs a systematic assessment of the impact of regulation that would allow evaluating the possible effects of regulations

issued. In other words, as stated before the ministries' DGTALs and the SLyT-CABA need to deliver a legal justification of the draft regulation which on some occasions is accompanied by a technical appraisal.

Furthermore, with the recent reform at the City's level stated above, the Ministry of Finance and the Chief of Cabinet issued on 7 September 2018 a resolution to adopt *Joint Resolution No. 14/MJGGC/18 of Good Regulatory Practices for the Regulation and Promotion of the Economic Activity in the City of Buenos Aires*. This document also introduces other regulatory management tools such as system interoperability, regulatory simplification, stakeholder's engagement, amongst others, with subsequent publication of guidelines for this purpose. The main purpose is to measure CABA's economic regulations impact in the private sector. Moreover, important efforts are being carried out to implement this reform; the Ministry of Finance is already analysing the economic impact of new regulation on a case by case scenario, i.e. brewery industry, market of second-hand mobile phones.[1]

To what extent does CABA engage with stakeholders specifically for the rulemaking process is another element being assessed. As stated in Chapter 3, it is through consulting with the public that governments collect information with potentially affected or interested stakeholders while developing or reviewing regulations. In CABA's government, engaging with stakeholders through public consultation for regulatory matters is not yet part of their systematic procedure, but the publication of the joint resolution for "Good Practices for the Regulation" mentioned before has as one of its objectives to address this gap.[2]

Nonetheless, in 2016, CABA launched the Dialogue BA initiative (Lacalle, 2016[14]), a forum created to discuss ad hoc public policies amongst which regulations related to electoral reform and access to public information were part of the policies put forward for consultation. Dialogue BA includes diverse sectors such as the government (including representatives of the executive, legislative and judiciary branches), academia and civil society come together to debate in open tables to reach consensus on these topics. After the discussion, the group drafts conclusions that may be used for developing new regulations. For example, in the early stages to drafting the Urban Code of the CABA, the government launched a participatory process with stakeholder representatives, such as the civil society, the academia, non-governmental organisations (NGOs), legislators, experts in the field, etc. The consultation process accounted for more than 700 proposals drafted in more than 200 meetings with the participation of 5 000 participants.

Apart from Dialogue BA, CABA has implemented several initiatives that aim at increasing transparency and stem from the commitment of the three branches of government to the open government agenda[3] and include:

- BA Chooses (BA Elige): an online platform for citizen engagement. Citizens can propose public works and services.
- BA Data: an online platform that concentrates and provides open data from every agency of the government.
- BA Public Works (BA Obras): an online platform that provides information on public works, infrastructure and budget.
- Government commitments: account 50 specific and measurable objectives indicated by the Chief of Government. The government of the city is accountable for these commitments in face of the citizens. The commitment's follow up

information has been published on the web portal www.buenosaires.gob.ar/compromisos.

Moreover, in 2016 CABA created collaborative centres with other peer subnational governments with the aim of sharing public policy experiences implemented by CABA with other cities and provinces.

CABA focuses strongly on the current stock of regulation for the implementation of regulatory management tools; administrative simplification is, therefore, the most developed tool based on the modernisation programme. Indeed, since 2009 an important effort is underway to eradicate the use of paper for administrative procedures, both for internal government processes and for formalities (*trámites)* for business and citizens (see Box 5.4).

The main regulatory tool consists of administrative simplification through digitisation of administrative procedures. In 2009, the CABA committed to a modernisation plan (*Law No. 3.304 for the Modernisation of Public Administration*) which included a strategy to become a paperless government (see Box 6.4). CABA established online administrative proceedings using electronic files and signatures.

Box 6.4. Digitisation in the City of Buenos Aires: Towards a paperless government

From 2009 to 2014, the City of Buenos Aires managed to shift from a paper-based to a digitised public administration. By 2009, over 15 million documents were produced per year and by the end of 2014, over 850 administrative procedures were digitised and paper was eliminated from the administration which allows for the implementation of quality control mechanisms and tracing of procedures.

The project included training of human resources; processes improvement and implementation of technology. The strategy brought standardisation of processes and transformation of habits of public servants and citizens and resulted in sustainable use of resources.

Archives were also digitised which allowed for a better stock of data and ease of access to information. The initiative was accompanied by a new Internet network installed across public spaces such as libraries, municipal buildings, parks, subway stations, hospitals, museums and squares.

To date, the administration is totally based on the SADE system, which includes the Electronic File System, the Digital Generator of Official Documents and the Remotely Conducted Administrative Procedures TAD.

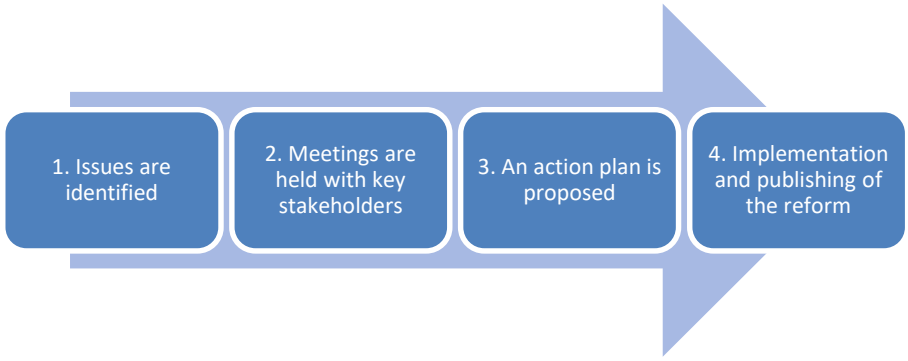
CABA has also enabled formalities for citizens and business online. At the time of writing this report CABA reports to have 266 formalities as TAD, in which information can be submitted electronically, and in some cases, officials' responses can also be received electronically. The website http://www.buenosaires.gob.ar/tramites contains the listing of the formalities for informational purposes, and if it is the case, citizens or entrepreneurs are then directed to the websites http://www.buenosaires.gob.ar/tramites-online or http://www.buenosaires.gob.ar/tramites/tad. With some variations, users can then follow the management of the formality electronically.

Source: Clusellas, Martinelli and Martelo (2014[15]) *Gestión Documental Electrónica. Una Transformación de Raíz hacia el Gobierno Electrónico en la Ciudad de Buenos Aires*, Secretaría de Gobierno de la Ciudad de Buenos Aires, Ciudad Autónoma de Buenos Aires.

For this purpose, in 2009 CABA established an Administrative Reform Board as a formal mechanism aimed at improving the efficiency of internal administrative procedures. The board includes high-political members such as the Minister Chief of Cabinet, the Legal and Technical Secretariat, the Ministry of Finance and the Ministry of Modernisation. In its first years (2009-14), this Administrative Reform Board focused on the implementation of the SADE and the digitisation process aimed at having a "paperless government". Currently, the board is proposing other administrative simplification initiatives such as the reduction of 50% of the City's public records. CABA's objective is to avoid duplication of registration and to eliminate the burden of registering activities that are no longer relevant to be publicly recorded. Meetings are held weekly and involve a four-stage process described in Figure 6.4.

Figure 6.4. Administrative Reform Board

Stages for simplifying administrative procedures



As mentioned above, the board focuses on the simplification of the administrative burdens. In the past year, several decrees and resolutions were issued to reduce the information requirements for some industries, including dry cleaners, events producers, environmental laboratories, dog walkers, among others. The elimination, consolidation or simplification of registries should improve and streamline the management of administrative procedures, benefiting the public administration and the users.

CABA has also introduced the initiative *Marca BA147*. It identifies the main point of contact with which residents of the city of Buenos Aires can employ to connect with their local government. From the point of view of the CABA, it is configured as a multi-channel attention system to manage the demand of its citizens. These demands requests for: i) general information (public office opening hours, cultural activities, traffic cuts, etc.); ii) the repair or improvement of the public space; iii) booking of appointments for formalities that must be conducted on site (as the renewal of driver's license); and iv) online formalities (request of birth certificate, replacement of a lost document).

In the case of the management of formalities, *Marca BA147* allows citizens to contact directly public officials in charge of the formality via telephone or through messaging systems on smartphones, in order to raise questions, complaints or learn the status of their submissions. CABA reports that the latter channel has had wide positive acceptance by citizens, which has resulted in further reductions of burdens for citizens, as they have saved time on trips to public offices. Moreover, the mobile application includes the possibility of completing administrative procedures remotely (e.g. birth certificate, replacement of a lost identification) and has a chat that helps citizens and users of the platform.

Case study: Province of Buenos Aires

Economic background

The Province of Buenos Aires (PBA) is the largest (300 000 km²) and most populated province in Argentina with 15 594 428 inhabitants according to the National Institute of Statistics and Census of Argentina (INDEC, 2010[9]). It is located in the central-eastern part of the country, in a region known as the Pampas. The capital of the Province is the city of La Plata.

PBA's economic activities are diverse and include commerce, real estate, construction, transport and storage, and tourism. However, the most important sector is the industrial, especially chemicals, food and beverage production, which represents the largest contribution to provincial GDP (26.9%). Another significant economic activity is agriculture; the province agricultural activity is strongly related to agricultural-based products manufacture and Argentina's high levels of commodities' exports (Ministry of Economy, 2011[16]).

The province plays a central role in Argentina's economy. It contributes 36% of the national GDP, more than half of the country's manufacturing industry and 37% of its exports (Ministry of Economy, 2011[16]). Argentina's economic growth is closely linked to the success of the Province's economic performance.

Government structure and rulemaking process

According to *Law No. 24.430 Constitution of Argentina*, the PBA has all the powers not attributed to the national government (Article 1). Bases on this precept, the province has its own constitution from where its regulatory powers stem. PBA comprises 135 municipalities each of which has its own government, responsible for providing basic local services and therefore for issuing regulation.

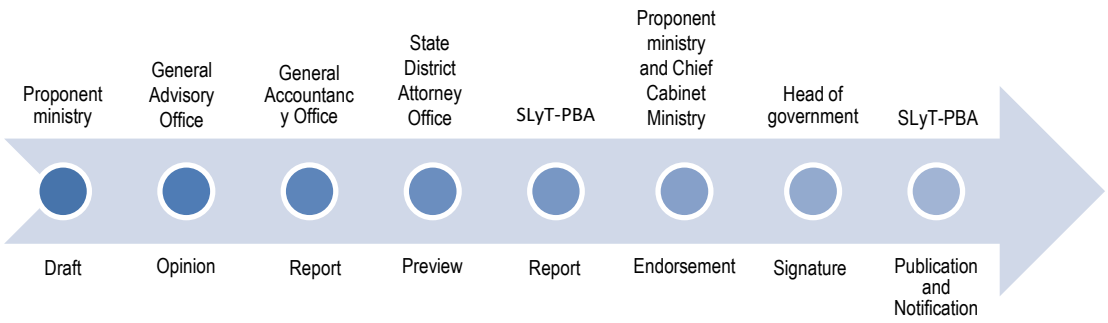
The provincial government has an executive branch, a legislative branch and a judicial branch. The executive branch comprises a governor and a vice governor, both of whom are elected by popular vote. The legislative branch consists of an upper and a lower house embodied in a senate and a chamber of deputies. The judicial branch consists of trial courts, courts of appeals and the Supreme Court.

As it is the case in the national level, PBA has a Legal and Technical Secretariat within the office of the governor, in charge of assessing the technical and legal aspects of drafts of regulations and the publication of regulation in the official bulletins (*Law No. 14.989 of Ministries of the Province of Buenos Aires*).

When issuing regulations, PBA has a specific procedure to comply with that differs from the national procedure and from CABA. Indeed, after a ministry proposes new regulations that must be signed by the head of government (decrees), the General Advisory Office delivers a first legal and non-binding "opinion" on the draft; parallel to this document, the General Accountancy Office produces a report on budget feasibility. It is after this process is carried out that the State District Attorney Office issues a preview verifying the legality of the draft. While the General Advisory Office's opinion is merely a legal assessment, the State District Attorney Office has powers to require information and act as an oversight entity.

After the issuance of these three reports (i.e. opinion, report and preview), the draft is sent to the SLyT-PBA for assessment. The SLyT-PBA produces a non-binding report and sends the draft to the proponent ministry and the Chief Cabinet Ministry to be endorsed. Subsequently, after all the reports have been issued, the governor signs the draft. Finally, the SLyT-PBA orders the registration and publication of the decree in the official gazette and the notification to the State District Attorney Office. This procedure is illustrated in Figure 6.5.

Figure 6.5. PBA's procedure for issuing regulations



Anecdotic evidence shows that there are no direct legal consequences if ministries do not consider this procedure. *Law No. 14.989 of Ministries of the Province of Buenos Aires* provides that the SLyT-PBA supports the executive branch on its functions; hence, the secretariat has an advisory role. Furthermore, the process differs if the new regulations are only signed by ministries. In this case, the Secretariat does not issue a report.

Use of regulatory management tools (regulatory impact assessment, consultation, administrative simplification and centralised registries)

As in the case of CABA, the employment of regulatory management tools in PBA is mostly related to specific efforts on administrative simplification. Even when there are institutions and documents relating to the control of the issuance of regulation, the assessment relies strongly on legal and budgetary implications of the regulation. In that sense, at the start of the preparation of this report, PBA did not have an impact assessment or other instruments to evaluate the possible economic impacts of regulations yet. The analysis of new regulations is done as explained in the prior section.

Regarding the rulemaking process, PBA is entitled to request information from stakeholders before the issuance of regulation but does not do it currently in a systematic manner. Furthermore, provincial regulation provides the mechanism of non-binding public hearings when issuing economic regulation, i.e. revisiting public services tariffs.

Before finalising this report, PBA issued on 11 July 2018 *Administrative Resolution RESOL-2018-16-GDEBA-SLYT of the Programme of Regulatory Impact Assessment*. The objective is to introduce the regulatory impact assessment (RIA) tool and stakeholder engagement practices in the preparation of draft regulations to ministries interested in participating in the programme. PBA also issued guidelines, a manual for RIA and a template.

As for the current stock of regulation, administrative simplification is one of the specific objectives of PBA's modernisation plan (*Law No. 14.828 of Strategic Plan for the Modernisation of the Public Administration of Province of Buenos Aires*) which

establishes that public administration must develop strategies to eliminate, reduce or simplify administrative procedures to offer quality and efficient public services. This provincial law was issued to achieve the objectives of the national modernisation plan and the Federal Commitment for the Modernisation of the State (see Box 6.2).

PBA is implementing digitisation measures to simplify internal administrative procedures for achieving a paperless public administration and a more transparent and agile government. Examples of simplification practices adopted are as follows:

- Single Simplified Procedure of the Ministry of Agribusiness: Digital platform for requiring industrial permits.
- Remote Audit System of the Revenue Agency of the Province: Digital mechanism to avoid tax evasion.
- Digital Certification System: Digital system for issuing certificates.
- Digital System for Public Management of PBA's Treasury: Digital tool for budget management.

Similar efforts are being carried out by PBA regarding formalities for citizens and businesses. PBA reports that it has prioritised 17 formalities for citizens and 67 formalities for businesses to be simplified. The simplification measures include the elimination of data and document requirements, digitisation, interoperability, reduction of official response time, amongst others.

Regarding legal certainty and transparency, there is a provincial government web portal that centralises its regulations and provides general access to regulation (http://www.gob.gba.gov.ar/dijl/). Also, through the portal of the Registry of Accessions to Provincial Standards, citizens have access to the provincial regulations that municipalities have adopted.

In addition, by means of *Law No. 14.962 of the Registry of Provincial Accessions to National Standards*, was created to centralise the national regulations adopted by the provincial government. Currently, the web portal is not functional.

Finally, the web portal for formalities of the PBA (https://portal.gba.gob.ar/web/portal/) includes administrative procedures organised by topic and final user. The site provides details on the people or businesses that can carry out a given formality, the steps that must be followed, the information requirements that should be submitted, and, in some cases, offers the possibility of doing the formality remotely. However, there is no complete registry of administrative procedures and services available yet.

Notes

[1] *Resolution No. 2.440/MEFGC/18* indicates the general guidelines that the Deputy Secretariat of Economic Development must follow in order to analyse regulations if they have impacts on economic activities. On the other hand, *Resolution No. 169/SSDECO/18* publishes the formats, procedures and evaluation criteria to control the regulatory process.

[2] Although the consultation practices are not a systematic step in the regulatory process of CABA, it is in fact a relevant criterion, as it can be observed in the resolutions issued by the Ministry of Economy and Finance and the Deputy Secretariat of Economic Development. For instance, the Deputy Secretariat will not conduct any impact assessment if it lacks of a consultation process with the private sector.

[3] http://www.gobiernoabierto.buenosaires.gob.ar.

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