OECD Reviews of Regulatory Reform

Regulatory Policy in Chile

GOVERNMENT CAPACITY TO ENSURE HIGH-QUALITY REGULATION

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Foreword

Chile is one of the most stable economies in Latin America. However, the lack of a comprehensive regulatory reform programme may have reduced possibilities for achieving higher economic outcomes. Most line agencies and regulators prepare regulations based on unclear evidence as to how best to intervene, and good practices in rule-making procedures are limited. In addition, the government of Chile could benefit from reinforcing and introducing regulatory management tools.

The OECD was asked by the Ministry of Economy, Development, and Tourism of Chile to undertake a regulatory policy review in Chile. The review was agreed with the objective of contributing to the ongoing debate on how to improve regulatory quality that stems from the National Agenda for Productivity, Innovation and Growth. The agenda has as one of its main objectives to improve the efficiency of regulation and public service delivery. Accordingly, the review focuses on regulatory policy, including the administrative and institutional arrangements for ensuring that regulations are effective and efficient. The assessment and recommendations provided will help the Chilean government improve the processes by which it makes, reviews, and enforces regulations that, in turn, expand the economy, lift productivity, attract and retain investment, improve services, and raise public welfare.

The review provides an assessment of and recommendations regarding the management of regulatory policies, institutions, and tools in the Chilean government. The report further provides sector specific recommendations including regulatory management and governance and the regulatory framework for SMEs, the regulation regarding construction permits and land use, and the digital government framework.

The *OECD Review of Regulatory Reform in Chile* was carried out under the programme of work of the Regulatory Policy Committee of the OECD. The OECD Regulatory Policy Committee is mandated to assist both member and non-member countries in building and strengthening capacity for regulatory quality and reform.

The methodology of the Regulatory Reform Reviews has developed over two decades of peer learning. It draws on and it is based on the Regulatory Policy Committee's legal instruments including: the 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation; the 2005 Guiding Principles for Regulatory Quality and Performance;* and the 2012 *Recommendation of the Council on Regulatory Policy and Governance.* The country reviews follow a multi-disciplinary approach and focuses on the governments' capacity to manage regulatory policy.

The report is based on answers provided by the Ministry of Economy, Development and Tourism, and a range of Chilean agencies to an OECD questionnaire, and on various meetings and interviews held in November 2014 and April/May 2015 in Santiago, Chile.

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The OECD Secretariat is grateful to the Minister of Economy, Development and Tourism, Luis Felipe Céspedes, and to Juan Cristóbal Marshall Silva, Chief Economist of the Ministry of Economy, Development and Tourism. Valuable contributions were also received from officials from the central government, including the Ministry of the Presidency (SEGPRES), Ministry of Environment and its Environmental Assessment Service, Ministry of Energy, Ministry of Public Works, the Ministry of Agriculture, the Office of the Comptroller General of the Republic, the Transparency Council, the Vice-ministry for Regional and Administrative Development, and the Vice-ministry of Transport, as well as from members of the Chamber of Deputies, the Office of the National Economic Attorney, the Budget Office (DIPRES); the National Energy Commission, Water General Direction, and the *Superintendencias* for Banks, Pensions, Stocks and Insurance, Sanitary Services, Electricity and Fuel, and Environment.

The OECD Regulatory Policy Committee also contributed to this review, particularly the delegates of Mexico, Eduardo Romero Fong, General Co-ordinator of Regulatory Impact Assessments, and the productivity commissioner of Australia, Jonathan Coppel, who participated as peer reviewers. The review also benefited from the participation of Virgilio Andrade Martínez, which at the moment of the review was Head of Mexico's Federal Commission for Regulatory Improvement during a capacity-building seminar organised for the government of Chile.

The project was managed by Jacobo Pastor Garcia Villarreal, OECD Senior Policy Analyst, and Guillermo Morales Sotomayor, OECD Policy Analyst, of the Regulatory Policy Division. Delia Rodrigo, consultant and Senior Regulatory Reform Expert, prepared chapters two through eight of the review. Chapter 1 was prepared by Eduardo Olaberria, Economist at the Economics Directorate of the OECD. Chapter 9 was drafted by Lorenzo Allio, consultant on regulatory policy, and benefited from contributions from Tamara Krawchenko, economist and policy analyst from the Regional Development Policy Division at the OECD. Chapter 10 was prepared by Paul Vronhoof; and Chapter 11 was prepared by Barbara Ubaldi, OECD Senior Project Manager of the Reform of the Public Sector Division. Editorial assistance was provided by Jennifer Stein and Cecilia Reilly. Administrative assistance was provided by Sara Kincaid and Deborah Barry-Roe. The overall project received contributions from Nick Malyshev and Guillermo Morales Sotomayor.

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Acronyms and abbreviations

ADP	High-level policy management
AGIES	General Analysis of Economic and Social Impacts
AP	Pacific Alliance
APEC	Asia Pacific Economic Co-operation
BD	Business desk initiative
CGR	Comptroller General of the Republic
CNDU	National Urban Development Council
CONAF	National Forestry Corporation
CONAMA	National Environment Commission
CONICYT	National Commission for the Scientific and Technological Research
CORFO	Economic Development Agency of Chile
DB	Doing Business Index of the World Bank
DEMT	SME Division
DIPRES	Directorate of Budget of the Ministry of Finance
DOM	Directorate for municipal public works
DTF	Distance to frontier
EAE	Strategic Environmental Evaluation
e-PAC	Electronic online platform
EU	European Union
FCM	Inter-municipal Common Fund
FDI	Foreign Direct Investment
FNDR	National Fund for Regional Development
FNE	National Economic Prosecutor
FOGAPE	Small business guarantee fund
FOSIS	Poverty reduction agency
FUA	Functional urban areas
GDP	Gross Domestic Product

GEM	Global Entrepreneurship Monitor
IaDB	Inter-American Development Bank
ICT	Information and communication technologies
INAPI	National Institute of Industrial Property
INDAP	Agricultural Development Institute
IPS	Social Security Institute
ISAPRES	Health insurance
JUNAEB	National Board of School Support and Scholarships
LACORS	Local Authorities Co-ordinators of Regulatory Services in the United Kingdom
LEP	Local enterprise partnerships
LGA	Local Government Association in the United Kingdom
MBN	Ministry of National Assets
MINECON	Ministry of Economy, Development and Tourism
MINVU	Ministry of Housing and Urbanism
MMA	Ministry of Environment
MOP	Ministry of Public Works
MP	Member of Parliament
MTC	Ministry of Transport and Communications
OECD	Organisation for Economic Co-operation and Development
PCS	Port Community Systems
PISEE	Integrated Platform of State Electronic Services
PKI	Personal key infrastructure
PMG	Management Improvement Programme
PNDU	National Urban Development Policy
PRC	Communal regulating plan
PRDU	Regional plan for urban development
PRI	Inter-communal regulating plan
PRM	Metropolitan regulating plan
PROCHILE	National Agency for Export Promotion
PROPYME	Business association representing SMEs
PTI	Integrated Territorial Program
PyME (SME)	Small and medium-sized enterprises
R&D	Research and development

RIA	Regulatory impact analysis
SCS	Senior Civil Servants
SECTRA	Department of Transportation Planning
SEGPRES	Ministry General Secretariat of the Presidency
SEIA	Environmental Impact Evaluation System
SEISTU	Impact Assessment System for Urban Transportation Systems
SENCE	National Training and Employment Service
SERCOTEC	Technical Co-operation Service
SEREMIS	Ministerial regional secretariats for social development
SERNAPESCA	Fisheries National Service
SERNATUR	National Tourism Service
SERVEL	Electoral Service
SERVIU	Housing and Urban Development Agency
SICEX	Integrated Trade System
SIPE	System for promotion of entrepreneurship
SME	Small and medium-sized enterprises
SUBDERE	Sub-secretariat of Regional and Administrative Development
SVS	Superintendency of stocks and insurance
TDLC	Free Competition Defence Tribunal
TFP	Total factor productivity
TPP	Trans-Pacific Partnership Agreement
UMyGD	Digital Government and Modernisation Unit

Executive Summary

Chile is one of the most stable economies in Latin America, and has, over the last two decades, sustained economic growth and reduced poverty. Governance arrangements have contributed positively to attracting business and provided certainty for economic activities. However, the lack of a comprehensive regulatory reform programme may have reduced possibilities for achieving higher economic outcomes. Most line agencies and regulators prepare regulations based on unclear evidence as to how best to intervene, and good practices in rule-making procedures are limited.

The recently launched National Agenda for Productivity, Innovation and Growth uses regulatory reform as a driver to foster its goals. The agenda includes regulatory reform measures to establish regulatory governance arrangements that support new policies and tools to improve the quality of regulation.

Main findings of the report

Today, Chile lacks a comprehensive approach to regulatory reform. However, elements that could support reform were found in fundamental legal documents, practices and institutions and should be used to further develop a coherent strategy to improve quality of regulation. The Chilean Constitution assigns responsibilities to various actors in the regulatory process, including the executive, the legislative, the judiciary and local governments.

Access for citizens and business to regulations and formalities has improved in Chile. Several initiatives have centred on making the legal framework understandable for citizens, but there are no clear standards or practices on the use of "plain language" in the drafting of laws and regulation. The introduction of the "freedom of information principle" also enabled citizens to ask for information, and contributed to increasing the transparency of the regulatory system. Regarding consultation practices, Chile lags behind most OECD countries in ensuring that the public can systematically participate in the rule-making process.

While there are no guidelines and standards for preparing new regulations, some legal controls exist through the legality verification role that SEGPRES and the Comptroller General of the Republic play at the end of the preparation of draft proposals. Chile does not make systematic use of regulatory impact analysis (RIA), which could improve the effectiveness and efficiency of regulations. Efforts have been made to introduce *ex ante* impact assessments, but it is still not standard practice among regulators.

The current regulatory stock in Chile is large and complex, in particular for subordinate regulations. Existing regulations are not systematically reviewed and the introduction of a new regulation might not automatically repeal a previous one. To date, the Chilean government has not undertaken a systematic approach to regulatory simplification. However, a few tools, some of which make use of ICT, help citizens and business understand the current legal framework and the requirements needed to obtain licences and comply with formalities. Moreover, programmes such as *Chile sin Papeleo* (Chile without Red Tape), the Citizens´ Office and the Business Desk (*Escritorio Empresa*) help reduce burdens and time when dealing with government requirements.

Compliance with regulations in Chile tends to be high, but the traditional approach to enforcement – based on a sanctions-based approach rather than one based on incentives, risk or education – is the most common way to make businesses and citizens comply with regulation. A few regulators are exploring the use of risk-based approaches to better focus their inspections and enforcement resources.

The Chamber of Deputies has made progress in setting up a Law Evaluation Department that currently conducts *ex post* evaluations of selected laws. The reports shed light on the impact of certain laws on society, and have also served as an input for discussions on possible law amendments. The Department remains small and its undertaking of additional reviews is limited. The Directorate of Budget (DIPRES) of the Ministry of Finance also contributes to evaluating *ex post* the allocation and use of financial resources in different government programmes, projects, and institutions.

Chile is a unitary country where the national government plays a key role in decision-making and service delivery. However, decentralisation processes have been introduced in the last few years and the government is considering the possibility of devolving powers to sub-national levels of governments, i.e. regions, provinces and municipalities. This could certainly have an impact on which actors have to take on further responsibilities; co-operation and co-ordination on regulatory matters is rather limited and capacities at the local level to implement an agenda for regulatory reform are mostly inexistent in the current context.

This report examines three thematic topics: territorial planning and construction permits, the regulatory framework for small and medium-sized enterprises (SMEs), and digital government. On improving territorial governance, there is a need to align scattered efforts in order to speed up and give certainty to planning and delivery performances. In Chile, 84% of all enterprises are SMEs and there are several initiatives in place, such as *Chile Emprende* and the SME Statute, that co-ordinate work in relevant ministries in the area of SME policy. However, barriers to entrepreneurship need to be tackled, involving stakeholders in the process. In addition, Chile has invested in the use of technology to modernise its public sector and improve service delivery. The aim now should be to better co-ordinate, deploy and use common platforms in one shared strategic objective.

Key recommendations

The government of Chile would benefit significantly from the establishment of an oversight body in charge of regulatory policy. The oversight body must pursue the adoption of a formal, explicit, binding, and consistent whole-of-government policy instrument with identified objectives and a clear communication strategy. In addition, it must develop mandatory standards and guidelines for the preparation of laws and regulations of the State administration. The establishment of quality standards and use of guidelines should include compulsory consultation practices, forward planning, plain language drafting, and disciplines for transparency and accountability.

The government should also introduce or consolidate the use of regulatory management tools - building on existing capacities, where practical - such as RIA; a broader cross-cutting administrative simplification programme in co-ordination with digital government initiatives, mandatory programmes on public consultation and, further develop *ex post* evaluation to include secondary regulation.

Assessment and recommendations

Regulatory policy and strategies

The government of Chile must pursue regulatory improvement through the adoption of a formal, explicit, binding, and consistent whole-of-government policy instrument with identified objectives and a clear communication strategy.

This strategic instrument could take the form of a law or government resolution. It should spell out the key building blocks of regulatory management and governance. The realisation of this policy should be supported through a high-level institutional body to oversee the implementation and co-ordination of regulatory improvement in Chile. It should give the lead institution a mandate to take and enforce decisions and set clear objectives. Regular reports on progress towards achieving regulatory improvement objectives should be provided to the government. Having this single, comprehensive instrument would also help communicate high-level political support for the implementation of the regulatory policy agenda in Chile.

Regulatory policy should be consolidated further in the framework of broader economic reforms promoted by the government of Chile.

Regulatory policy should be seen as an integral part of the whole agenda to connect productivity, innovation and growth strategies. Regulatory policy should help to establish regulatory frameworks, clear and transparent administrative procedures and tools for better policy evaluation. Regulatory policy should primarily be a mechanism to produce better regulatory outcomes, which can contribute to boosting economic activity, innovation, competition and social cohesion.

Several laws have incorporated additional principles that are important for regulatory reform. Transparency, access to information and public participation reforms have all been introduced in the last few years to improve the regulatory process, thus making it more accountable. However, this covers only the procedural part of the regulatory process. Chile still does not have a strategy to integrate regulatory reform as a tool to achieve better economic and social outcomes.

Institutional capacities for quality regulation

The government of Chile must set up an oversight body in charge of regulatory policy located at the centre of the government.

This unit could build on the existing work of the Legal Division and the Interministerial Co-ordination Divisions within SEGPRES. The unit should ensure a co-ordinated and consistent approach to the design of, changes to and implementation of law and regulations across the jurisdictional space of Chile. It should provide support to all government ministries through training and methodologies, including on regulatory management tools such as regulatory impact assessment, administrative burden

measurement and reduction. This unit would require dedicated staff to carry out its mandate. Staff background should include expertise in law, economics, social sciences and public management.

An advisory body at the highest political level could help the government of Chile to promote and advocate for regulatory reform.

This body should involve key ministers and/or deputy ministers and a wide range of stakeholders to identify and agree on key priorities, review progress and take any corrective actions that are needed to advance implementation of key regulatory reforms. The Ministry of Economy, Development and Tourism, for example, could be the Secretariat for such a platform, and it could work closely with the advocacy body to ensure that legal and regulatory amendments are proposed after sound analysis of the regulatory constraints faced by the businesses sector.

The government of Chile needs to create institutional capacities for regulatory reform.

The oversight body should be tasked with the preparation of key guiding documents, such as manuals, checklists, brochures, etc. to help regulators get acquainted with the use of regulatory management tools and procedures. Workshops, courses, seminars and training will also be important mechanisms to learn and share experiences among regulators. The long-term aim would be to create small, dedicated units within policy-making institutions charged with the promotion of regulatory quality.

Regulatory institutions in Chile need more accountable and autonomous governance arrangements in order to enforce regulatory portfolios, ensure efficiency and deliver better regulatory outcomes.

Chile might benefit from reviewing the governance structure of the regulatory institutions, in order to make institutions more accountable and protect them from major political changes or government interference.

Superintendencies should be granted more autonomy for the better enforcement of regulations.

Regulations are controlled and supervised, in some specific sectors, by superintendencies. The degree of autonomy and deconcentration varies among regulators and superintendencies, but there are no practices and arrangements compared to those of independent regulators in other OECD countries.

Governance arrangements for superintendencies could be improved by ensuring that independence from ministerial intervention is preserved while at the same time putting greater accountability disciplines in place. The OECD Best Practice Principles on the Governance of Regulators can provide guidance in this regard.

Co-ordination mechanisms between regulatory institutions have to be strengthened to improve all stages of the regulatory process.

Given the centralised nature of the Chilean administration, greater resources need to be applied to make ministries work together and ensure that regulatory decisions are properly discussed and enforced. Early and organised participation of superintendencies in the regulatory process, particularly in the sectors where they play the exclusive role of supervision and control, is essential to improve the quality of regulation. For the regulatory system as a whole, inter-ministerial co-ordination would require the introduction of some incentives and sanctions.

Improved transparency through consultation and communication mechanisms

The government of Chile should develop mandatory standards and guidelines to improve the preparation of laws and regulations for the whole State administration.

The establishment of quality standards and the use of guidelines for the development of bills and draft regulations should include forward planning, plain language drafting, disciplines for transparency and accountability, and the preparation of impact assessment. These standards would help policy units and regulators to prepare their regulatory interventions in a more systematic way, as well as facilitating a culture that promotes regulatory quality.

The government of Chile should introduce compulsory consultation practices, mechanisms and standards to improve the preparation and review of regulations and systematically check for compliance among regulators. These standards could build upon a number of practices already in place in Chile.

Consultation practices vary among regulators. In some fields, such as environment, practices have improved over time, but "public notice and comment" is not compulsory in the preparation of draft regulations, apart from very few exceptions, which reduces the possibility for any interested party to have fixed periods of time to formally provide comments to draft regulations.

The government of Chile should integrate the use of RIA in a co-ordinated and systematic way within the regulatory process, building on existing capacities.

The development of new regulations is not compelled by the need to explain the rationale of the regulatory intervention, in terms of economic and social impacts, and ensuring that the benefits outweigh the costs of a possible regulation. Chile is therefore lagging behind OECD countries in the use of evidence-based decision-making tools and the assessment of different options and alternatives to address regulatory problems.

It should consider the introduction of some threshold test to determine more systematically the legislative proposals to require an in-depth RIA. The preparation of the impact assessment should be initiated early in the decision making; before the decision to regulate has been made (also see recommendation below). The preparation of the impact assessment should be used as a tool for collecting feedback from stakeholders (and hence improving proposals and decisions). The oversight body should check the quality of impact assessment, consideration of alternative options for proposed legislation and the scope and extent of stakeholder engagement. This quality check should be mandatory and combined with a challenge function – drafting institutions should be required to revise the draft proposal if necessary.

Chile should promote the use of alternatives to regulation.

The identification of the policy problem and the consideration of meaningful alternative solutions should be performed early in the decision making process. Impact assessment statements should include a justification that a regulatory solution is the most suitable option and that the problem cannot be addressed through a non-legislative intervention. Compliance with this condition should be monitored and enforced by the oversight body.

The management and rationalisation of existing regulations

The government of Chile should consolidate the repositories of primary and secondary regulations, and conduct reviews of regulations in order to streamline and simplify the current legal stock.

The creation of an inventory of regulations could provide the basis for simplification of the administrative stock. It would serve as a baseline for reviews of existing regulations to ensure that they are up to date.

In relation to the stock of regulations, Chile has not yet undertaken a comprehensive review and it does not make systematic use of legal techniques to ensure that the current regulatory stock is up to date. This means that there might be outdated regulations still valid, even if they are no longer in force. Codification, consolidation and recasting are legal techniques that the executive and the legislative could use in order to maintain the stock of regulations properly organised and updated.

The government of Chile should expand its current efforts to engage in a cross-cutting administrative simplification strategy, focusing on high-impact regulations and formalities, assessing their costs and supporting their simplification and streamlining.

In many OECD countries (e.g., Denmark, Netherlands, United Kingdom, etc.) administrative simplification has evolved into a comprehensive package of tools and measures that help to reduce costs for businesses and citizens. Many OECD countries have engaged in broad national programmes to measure administrative burdens related to regulation and formalities. Such efforts, which are quite resource-intensive, are currently being evaluated to assess their value for money. Chile could learn from those practices to design a strategy to quantify the administrative cost of regulation, to target the simplification efforts adequately, ensuring that the effort is worthwhile.

The government of Chile should ensure better co-ordination of digital government projects with administrative simplification efforts.

The digital government initiatives should be co-ordinated by one body and summarised in one government-wide policy. Interoperability and inter-connectivity of all information systems and portals must be ensured. Projects in the areas of digital government and administrative simplification should be interlinked (ideally part of one wider policy) and subject to public consultation. Public services and/or administrative procedures should not be digitalised without prior assessment of options for their simplification.

Compliance, enforcement, appeals

Enforcement strategies given impetus by compliance, rather than sanctions, should be promoted among regulatory institutions and superintendencies, making use of risk-based approaches to better deploy their resources.

As in many other Latin American countries, enforcement in Chile is mainly seen within the framework of command-and-control regulation, applying sanctions to those who do not comply with the regulations in force. Institutions have made progress in setting sanctions that are in proportion to the rules broken, as an appropriate deterrent for non-compliance. The laws that create each regulatory institution in Chile establish the

type and amounts of sanctions that should be applied, which gives each institution the freedom to introduce the sanction mechanisms in relation to the behaviour to be punished.

The government of Chile should streamline the various channels for administrative and judicial review.

There is scope to improve the various channels for administrative and judicial review that the Constitution and different legal instruments in Chile grant to citizens. There are different levels and mechanisms to ensure that citizens are protected against arbitrary regulatory decisions, but the system could be encouraged by more streamlined and flexible procedures, the use of ICT and more specialised technical capabilities.

Ex post *evaluation*

Ex post ***review of laws should be strengthened and the recommendations by the Law Evaluation Department should be used to further improve regulatory quality.***

The successful introduction of *ex post* evaluation of laws in the Chamber of Deputies in Chile is a clear example of the relevance of periodically reviewing the legal framework in order to keep it valid and coherent over time. The work conducted so far in Chile shows that *ex post* evaluation of laws can provide good evidence for legal amendments that should benefit society as a whole. This work has to be carried out in more depth and strengthened in order to become a systematic process that promotes regulatory quality. It could also benefit from the inclusion of sunset clauses or review clauses, which would compel regulators to promote *ex-post* reviews after some years' validity.

The government of Chile should introduce ex post evaluation of secondary regulations.

Chile has been a pioneer in the *ex post* evaluation of laws, but additional steps should be undertaken to ensure that other regulations, in particular secondary regulations, are also part of this systematic work and that the whole legal system benefits from this process. The laws and regulations should be periodically reviewed and done in co-operation with the executive and the legislative, taking into account that most information on the implementation side lies in the regulatory bodies of the executive branch. The executive, therefore, should actively participate in this process and ensure that the institutions responsible for the implementation of laws co-ordinate with each other.

Once a programme for regulatory quality is introduced, ensure that its performance and impact is reviewed regularly.

Chile has the opportunity to introduce a performance evaluation of their regulatory policy once a regulatory quality strategy is developed and introduced. The aim is to ensure that such a policy achieves its objectives. It would also be important to allocate that responsibility to an external body which can provide recommendations for further improvement.

Multi-level regulatory governance

During the implementation of regulatory quality in Chile, co-operation, co-ordination and dialogue with lower levels of government should be promoted, including the support from the central government to develop capacities in regional and municipal governments.

This could require a formal mechanism or platform to be set up where the central and local governments can discuss a common regulatory reform agenda that could incorporate the identification of priorities, but also the gaps that local governments might be confronted with. Such a platform would help to make commitments and ensure that local governments promote good regulatory practices.

Any decentralisation process in Chile should include the promotion of regulatory quality and good practices at sub-national levels of government.

Taking into consideration that sub-national levels of government are generally not fully equipped, from the financial and the institutional points of view, to undertake additional regulatory functions, decentralisation should be carefully designed to ensure that regions and municipalities have enough resources to implement their new powers. If sub-national levels of government are granted more regulatory powers, they should adopt tools to avoid making decisions without evidence.

Territorial planning and construction permits

Chile should carry out a functional review of the institutional arrangements governing both territorial planning and development generally, and the construction permit sector in particular.

It should streamline the initiatives launched by the Executive and find synergetic approaches with the ongoing reform discussions taking place in the Legislature, putting emphasis on stakeholder engagement throughout the policy cycle and through feedback loops from the bottom up. The governance structure could benefit from greater oversight and co-ordination; together with a review of the functions of institutions involved.

Local governments and stakeholders should also be actively involved in the monitoring process and be allowed to contribute evidence and recommendations for policy refinement by means of institutionalised, transparent feedback mechanisms.

The legal framework governing the construction permit regime should be consolidated and brought up to date with the current needs of the country.

Such a reform process should benefit from extensive public consultation and be based on proportionate economic evaluations in order to address the costs generated due to possible procedural delays or mistakes, divergent decisional outputs and treatments, and potential capture. The revision should strive to make the framework simpler, clearer and more accessible in terms of both procedures and legal requirements for legal texts and provisions issued, managed and implemented by the various authorities at all levels of government.

When upgrading the legal framework, particular attention should be given to introducing market-based elements, for instance with regards to expanded and clearly defined risk-based approaches to inspections and to generalised insurance schemes.

Chile should consider the institution of certified private actors entrusted with inspection and enforcement functions. This does not imply de-regulating the inspection regimes, but delegating executive tasks to market operators under a transparent and well-defined power regime. Furthermore, elements of risk-based approaches to regulating construction permits are in place. However, there is ample margin for expanding the approach to certification and enforcement control, as well as requiring for mandatory insurance, so that Chile is in line with good international practices.

The organisational and legal review should specifically consider improvements in urban planning, notably by leveraging functional socio-economic dynamics instead of administrative boundaries. In order to do so, checks and balances should be set up to preserve technical expertise from direct political interferences in the execution of administrative tasks.

Conversely, international good practice suggests that the territory should be designed functionally, i.e. in terms of socio-economic interlinkages and mobility rather than through mere administrative entities. A functional approach to territorial governance would also address structural issues related to the allocation of revenues on the one hand and budget for regional and local development investments on the other.

Chile should reform the system of collecting, processing, circulating and managing information in all public administrations and on the interface with the public.

An effort to digitalise the construction permit procedures by activating and disseminating both front office and back office re-engineering, combined with appropriate capacity building, should continue to be sought. The Chilean construction permit regime still largely relies on paper-based procedures. The penetration of ICT and digital government solutions for processing and using construction permit procedures has remained extremely limited.

Regulatory environment of SMEs

The government of Chile should support SME's development by formalising stakeholders' involvement throughout the regulatory process with the aim of having interventions that are more suitable to their needs.

The consultation process could largely benefit from clear, standard and compulsory guidelines regarding SMEs, even at the sub-national level. The SME Statute is a powerful tool that already indicates acknowledgement of the need to treat SMEs differently and involve them in the rule-making process. However, in practice, the SME Statute is carried out in a procedural manner rather than as a cost-effective mechanism for information. SME Statute is seldom conducted before the draft regulation is prepared and it has the risk of becoming a justification of the regulatory proposal.

Focusing and targeting resources on the quality of doing business is just as important as the creation of new enterprises. Increasing the capacities of targeted groups or sectors such as women and youth should be the focus for SME policy in Chile.

In the wake of the financial and economic crisis and the difficult access to finance for entrepreneurs, especially young entrepreneurs, this group could form a target group for more tailored policies. Female entrepreneurs already form a focus of SME policy under the Agenda for Productivity, Innovation and Growth but could still benefit from further support. Specialising financial support programmes or administrative burden alleviation on specific sectors (for instance, agriculture or food-processing sectors, where stakeholders indicate there are large amounts of hygiene requirements and inspections) could be designed as well. Such sectors could benefit from a more efficient manner of communicating and complying with relevant regulations.

Establish mechanisms to actively provide oversight to SME policy with the aim of improving coherence and co-ordination within the existing agencies and programmes at all levels of government.

Improved co-ordination and communication at the national policy-making level in Chile could be very beneficial for a more coherent and streamlined SME policy portfolio. This could be achieved through systematic, regular meetings between branches of national ministries and agencies at work in similar or overlapping sectors. At the EU level for instance, consultations and workshops between relevant sectors are quite common. In certain European countries there is also a more prevalent consensus based approach to policy making (Sweden and the Netherlands for instance), which includes multiple stakeholders coming together to discuss challenges for a given sector and appropriate policy responses.

Engage in an administrative simplification programme specifically for SMEs, with a focus on the most burdensome regulations. Take advantage of existing initiatives to assess their costs and support their simplification and streamlining.

Reviewing and simplifying administrative procedures would increase the ease of doing business in Chile. The opportunity should be taken to measure burdensome regulations and simplify them jointly with digital government initiatives such as the Business Desk. Efforts should be made to simplify procedures before they are digitised. Furthermore, as was the case in many other countries, administrative simplification might be used as a spring board for creating more sophisticated, whole-of-government regulatory policy. Given that the results of simplification programmes are relatively easy to measure and to present to politicians, high-level decision-makers as well as businesses and general public, these programmes can be used as a stepping stone to more comprehensive regulatory reforms.

Formalising existing informal SMEs and limiting the creation of new informal enterprises deserves a high political priority.

A crucial element in this respect is to both make it beneficial for the informal enterprise and ensure that these enterprises perceive it as such. Some of the main barriers which prevent formalisation include taxation, business registration/licensing requirements, and compliance with labour laws. For example, reducing the perceived cost of business registration by lowering the time and total cost of registering or decreasing taxes on new, small enterprises formalising themselves for the first time. Evidence shows that reducing tax rates and simplifying the paperwork and tax compliance helps increase the rate of formalisation.

The government of Chile could benefit from the implementation of ex post evaluation of SME regulation to ensure that performance and impact are reviewed regularly and objectives met.

As stated in the *ex post* chapter, Chile has been a pioneer in the *ex post* evaluation of laws, but additional steps should be undertaken to ensure that other regulations, in particular secondary regulations, are also part of this systematic work and that the whole legal system benefits from this process. The aim is to ensure that such a policy achieves its objectives. It would also be important to allocate that responsibility to an external body which can provide recommendations for further improvement.

Adopt a risk-based approach to enforcement and inspection strategies rather than sanctions. Enforcement and inspections need to be risk-based and in proportion to the level of risk they pose.

The major challenge for governments is to develop and apply enforcement strategies that deliver the best possible outcomes by achieving the highest possible levels of

compliance, while keeping regulatory costs and administrative burdens as low as possible. SMEs are those for whom the experience can be the hardest, and the burden the heaviest, as they have fewer resources to deal with regulations, compliance issues, amongst others.

Consolidate and implement the initiative* Escritorio Empresa, *or Business Desk, taking into account the wide array of policies and regulations regarding SMEs, including those at the sub-national level. Further efforts must take into account the large number of entrepreneurs who currently do not make use of the internet. Furthermore, information provided will require a mechanism that allows for systematic updating.

The Business Desk (measure 35 of the Agenda for Productivity, Innovation and Growth) will allow for a more coherent and systematic manner of providing information to entrepreneurs in one point. Currently, the one-stop shop for enterprise registration does not include the operating permit. The forthcoming evaluation of the *Tu Empresa en un Día* (Your Business in a Day) programme should take this element into account, and combine both. For both registrations, keeping the information up to date and ensuring that the information provided by the start-ups is reliable are important challenges. One can think of linking the enterprise ID-number to other services, expanding the possibilities of temporary permits to facilitate a quick start, automatic digital patent application going to the relevant municipality as part of the registration, for example. This would require support for the municipalities.

Providing information on the many policies and instruments available to SMEs in a country as large as Chile requires a well-developed communication strategy. Reaching entrepreneurs, especially in rural areas, warrants close attention.

Digital Government

The government of Chile should take steps to better align the digital government and administrative simplification agendas.

Further progress in its evolution from e-government to digital government would support better alignment of key strategies, synergetic partnerships among actors, and better co-ordination within and across levels of government. Chile has been making considerable efforts to increase the use of ICTs within the public sector to improve efficiency. Nevertheless, the strategy for the use of ICTs in the public sector is not always integrated and aligned with other relevant agendas. Furthermore, Digital Government is not sufficiently linked to the administrative simplification agenda, and the analysis of ongoing initiatives shows that improvements in terms of administrative simplification often happen as a secondary result of digital government projects.

The governance framework for digital government should be redesigned to improve co-ordination and collaboration in the design and implementation of strategies and initiatives for digital government and administrative simplification.

Clarify, strengthen and institutionalise the overall governance framework for digital government giving it a clear mandate, budget and focus, also in relation to administrative simplification. This includes also providing it with adequate enforcing powers.

The government of Chile should leverage existing policy instruments to spur alignment between digital government and administrative simplification objectives.

At the moment there is no single administrative simplification agenda for the central administration in Chile. The Government could consider designing one, in conjunction with, or as part of the digital government strategy. Rely on champions that have been using ICTs also to simplify administrative processes and build on previous efforts to support co-ordinated strategies at the horizontal level. The civil registry for example is a key actor for the service delivery agenda and provides examples of good practices (i.e. use of ICTs, awareness of the need to aim at administrative simplification, involvement of civil servants to develop their capacities and create a sense of ownership of the new platforms and tools).

It is important to foster better integration between administrative simplification and digital government agendas through the implementation of existing individual initiatives and projects.

Prioritise and leverage the implementation of existing or planned initiatives that aim at fostering interoperability of data, systems and processes to improve integrated service delivery, as well as simplifying procedures and formalities.

The government of Chile should involve stakeholders and adopt a user-driven approach to bring the administration closer to the users and to receive feedback in order to improve impact.

The government of Chile appears having focused so far on administrative simplification from a service provider's perspective, i.e. looking at the formalities to simplify rather than placing attention on the needs of the users. There are good examples to build on, such as the one provided by the IRS, which targets simplification of formalities (e.g. e-invoice) from the citizens' perspective.

Chapter 1

The macroeconomic context in Chile

This chapter sets out the macroeconomic context for the review, including recent macroeconomic trends, the contribution of regulatory reform to economic performance, and the remaining challenges of the Chilean economy. Over the past 25 years the Chilean economy has become stronger, and social progress and poverty reduction have seen significant improvements. However, the economy is in a transition as prospect for copper prices have weakened and growth and investment have decelerated sharply. To sustain progress in well-being, Chile needs faster productivity growth which has stagnated. The government has introduced important steps to strengthen redistribution, improve equality of opportunities and boost productivity, including ambitious tax, labour and education reforms and a productivity agenda. These reforms go in the right direction, but there is still room to improve policies to make the regulatory framework more growth friendly and boost productivity.

The quality of life in Chile has improved significantly over the last two decades. Thanks to robust growth, poverty has decreased significantly while increases in average disposable income and life expectancy have been among the highest in the OECD. This high level of growth was a consequence of many economic reforms carried out in the 1980s and 1990s that helped the country catch up with the most advanced economies in the world. Trade liberalisation led to productive opportunities, and macroeconomic policies helped to control inflation and smooth economic cycles, reducing uncertainties and encouraging investment. These developments have helped Chile become the country with the highest GDP per capita in Latin American and the first South-American member of the OECD.

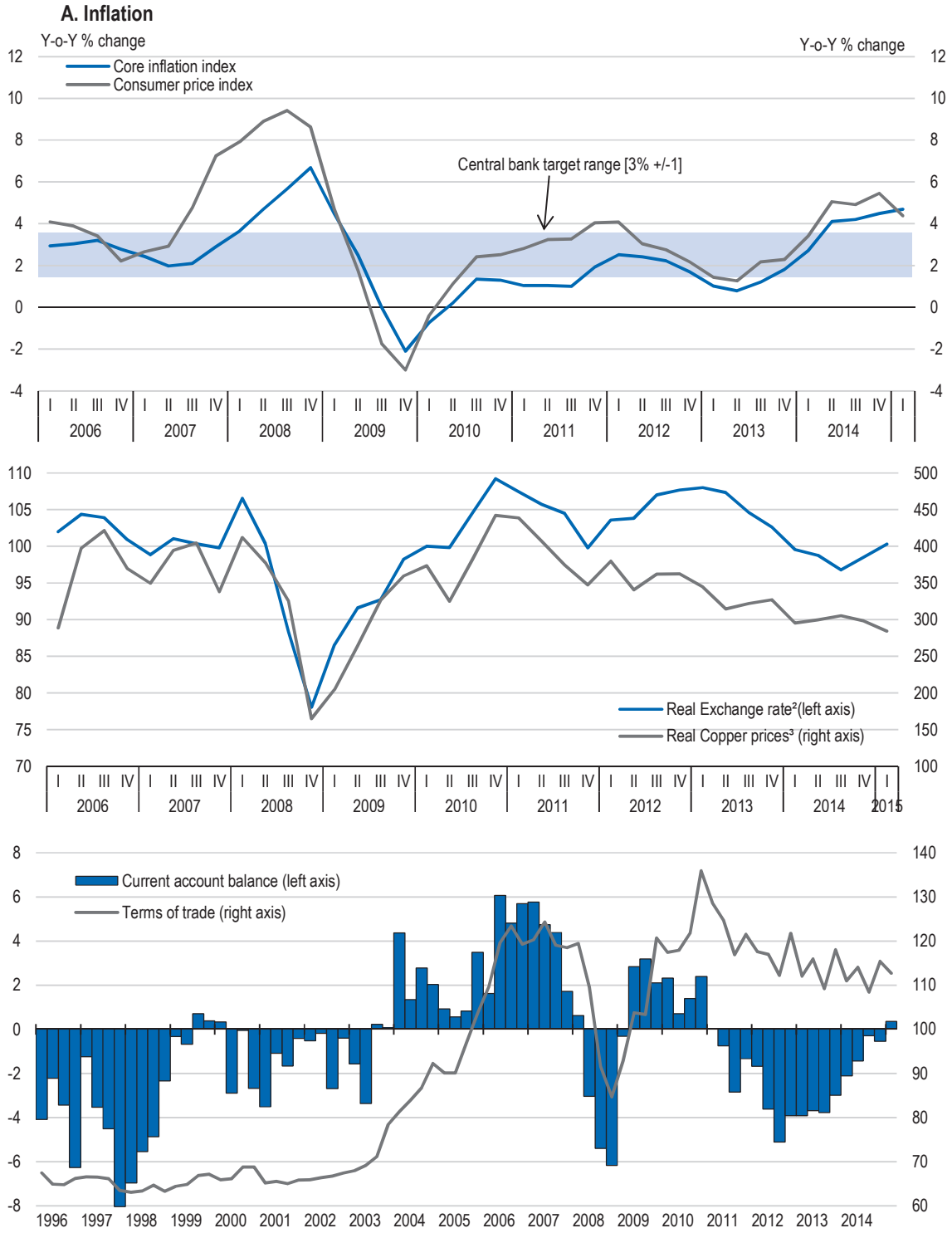
A sound macroeconomic framework that helps dampen the impact of external shocks

One of Chile's biggest strengths is a very sound macroeconomic framework that reinforces the resilience of the economy in the face of shocks, notably terms of trade volatility. This framework is based on a responsible and predictable fiscal policy rule that isolates expenditures from the business cycle and seeks to build up a large financial buffer, an inflation-targeting regime (with a flexible exchange rate) administered by an autonomous Central Bank, and a prudent regulatory and supervisory framework governing the financial system.

The fiscal rule, for example, helped Chile in the early part of the commodity boom to run current account surpluses by forcing the country to save a substantial part of the windfall. The fiscal surplus grew from 2% in 2004 to over 7% of GDP in 2007, allowing the country to save more than 10% of GDP in sovereign wealth funds. In the second half of the period, the counter-cyclical response to the financial crisis, reconstruction spending related to the 2010 earthquake and tsunami, the increase in production costs in mining and the internalisation of what then seemed to be permanently higher commodity prices, significantly reduced fiscal surpluses, which then turned into deficits. However, since the fiscal situation remains robust – notably by the near absence of net debt – the government has room to act counter-cyclically and sustain aggregate demand if conditions warranted.

Similarly, the inflation-targeting framework allows for counter-cyclical monetary policies, enabling the exchange rate to absorb adverse external shocks. For instance, during the period 2013-2015, allowing the exchange rate to depreciate has been an effective mechanism to dampen the recessionary effects of lower terms of trade on activity and employment. Currency depreciation has also led to a notable reduction in the current account deficit which, in 2014, was almost 2 percentage points of GDP lower than in 2013. However, the weaker exchange rate influenced the dynamics of inflation, and has put upward pressure on prices. Consumer prices rose by 4.7% in 2014, which is above the Central Bank's target range of 2 to 4%. Nonetheless, inflation expectations remain well-anchored at 3%, the centre of the Central Bank's tolerance range.

Figure 1.1. **Chile absorbs external shocks thanks to exchange-rate flexibility**



1. Exchange rates are index relative to the average value of 2007 which is defined as 100 for each currency.
2. Based on constant trade weights; deflated by import prices of goods and services. Average 2007 = 100.
3. For the real copper price, deflator: US Producer Price Index (PPI, all commodities). Average 2012 = 100.

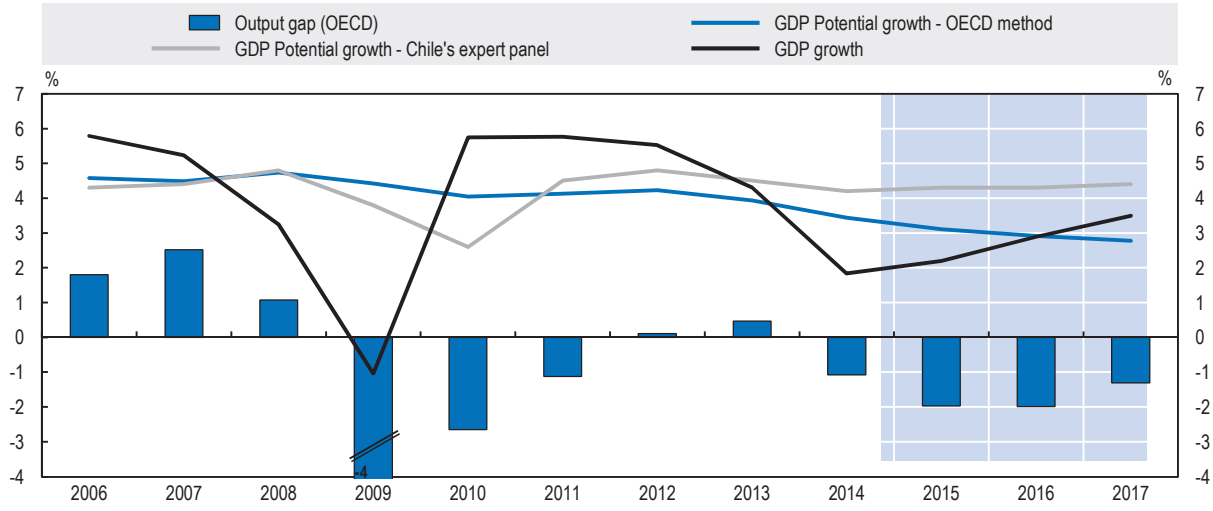
Source: OECD, Analytical and Economic Outlook database, and Comision Chilena del Cobre.

An economy in transition

As the largest producer of copper in the world, Chile benefited immensely from the upswing in commodity prices that started around the year 2000, and which, together with low international interest rates, had important macroeconomic implications. First, they provided a strong impulse to GDP growth which, during the last decade and with the exception of the 2009 financial crisis, was higher than in most OECD countries. Second, it attracted large capital inflows as investment rates, especially in mining, rose significantly. Mining investment grew from approximately 2% of GDP in 2002 to almost 7% of GDP in 2012, generating large spill-over effects on other sectors.

However, the long phase of strong economic growth driven by the booming mining sector has come to an end. Commodity prices have declined sharply and tighter external financial conditions are expected once the United States starts to normalise monetary policy. Although commodity prices are still high by historical standards, their significant drop in the last few years has put an end to the so-called commodity super cycle. The widespread view that the decrease in copper prices will persist for some time to come has affected expectations and investment. Following the fall in commodity prices there has been a significant deterioration in business confidence and a sharp decline in investment. The recent prolonged period of weak investment has been one of the most notable trends in the last cycle: investment growth has been negative for six quarters, one of the worst records of the last three decades. Business confidence is around the lowest levels of the last ten years. The high correlation between expectations and investment has given rise to the idea that, in the absence of a substantial improvement in confidence, it will be difficult to sustain a recovery of investment in the medium term; and lower investment affects potential growth which is also trending downwards.

Figure 1.2. **Slowing economic growth in Chile (2006-2017)**



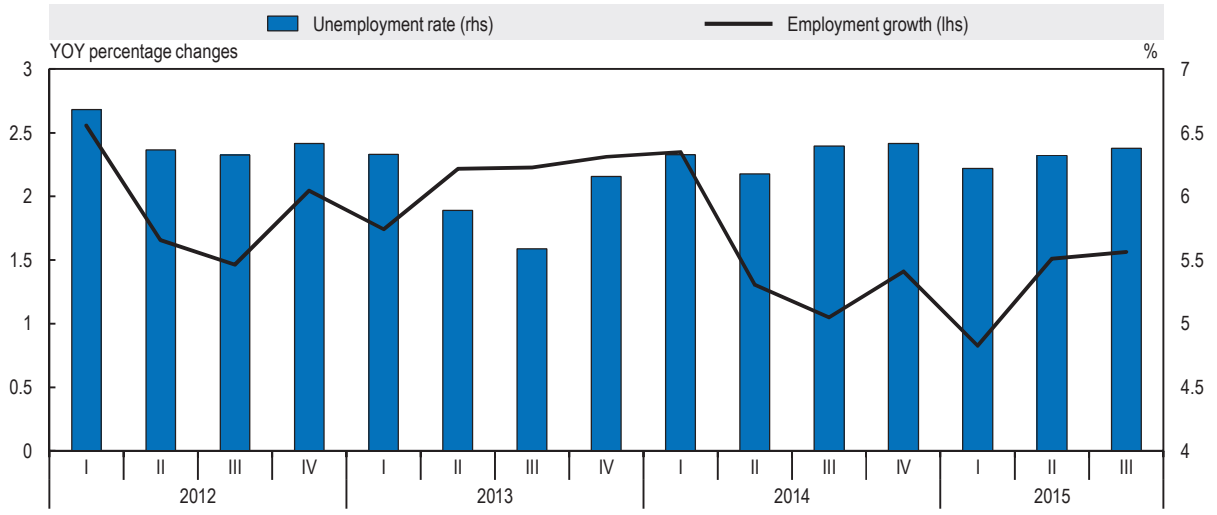
Source: OECD, Analytical and Economic Outlook database, and DIPRES, Directorate of Budget of the Ministry of Finance of Chile.

Lower terms of trade have also cut household incomes and private consumption. The growth of private consumption is limited and is currently below the aggregate growth rate of the economy. This includes somewhat higher nondurable goods consumption. The

other components of private consumption are weak, especially durable goods. In the first quarter of 2015, durable goods contracted, with an annual growth rate of -5.1%. In terms of output, the private consumption trend was reflected in the heightened fragility of the trade sector, where the annual growth rate dropped to 0.1% in the first quarter of 2015. In particular, retail sales of durable goods fell more than in the previous quarter (-5.1% annual versus -4.0% in the previous quarter).

On the employment side, despite the substantial slowdown of output and domestic demand, the unemployment rate has stayed low, and annual wage growth has accelerated, reaching high levels that have been sustained over time. This apparent contradiction between the labour market data and the output dynamics has generated a degree of concern, to the extent that it could be an indication that the economy's output gap is smaller than estimated (OECD, 2015c) and, therefore, could have a negative effect on inflation.

Figure 1.3. **Chile's employment has remained stable (2012-15)**



Source: OECD, Analytical and Economic Outlook database.

Sound financial indicators

Evidence suggests that the recent slowdown in activity and currency depreciation have not had a significant impact on the balance sheets of corporations, thanks in part to limited currency mismatch (Banco Central de Chile, 2015). Financial indicators of the companies reporting to the Superintendency of Stocks and Insurance (*Superintendencia de Valores y Seguros,* SVS) are sound, although levels have deteriorated with respect to historical averages. This reflects a loss in the sector's resilience to the possibility of a less favourable macroeconomic environment. Similarly, some bank payment indicators have deteriorated, with varying effects across banks, but especially affecting medium-sized ones.

The activity in the residential housing market remains strong, with prices still on the rise. This could be a consequence of the moderation of construction costs and anticipated purchases facing the forthcoming enactment of tax reform. Meanwhile the price indicators continue to grow, although some moderation is observed in specific areas and

sectors. In the office space sector, new square metres built were not offset by an equivalent increase in demand, generating a significant increase in the vacancy rate. These levels could be maintained for a prolonged period due to the inertia of the market and the incorporation of new projects.

Aggregate household indicators remain relatively stable, but with some of them showing a marginal deterioration. The debt over disposable income rose in 2014, while the financial burden remained around 14% of income, due to low interest rate levels. No changes in indicators of bank payment are seen, whereas in non-bank lenders a new increase is observed.

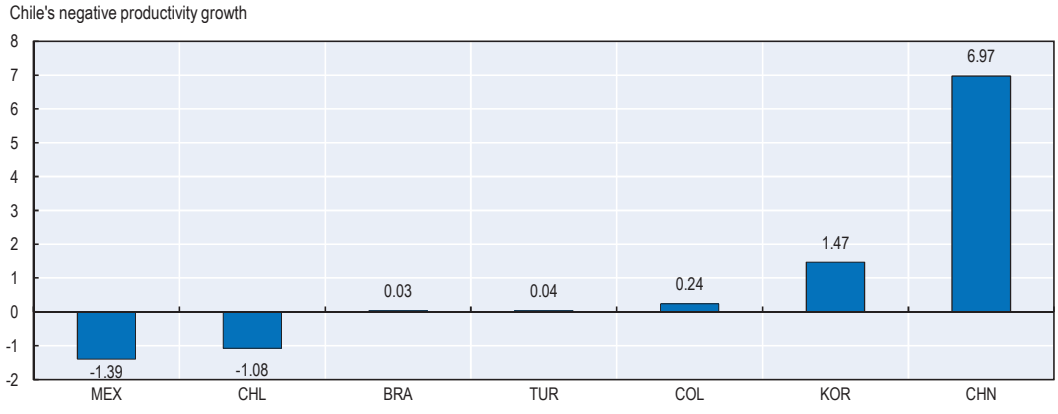
Bank financial indicators are stable and stress tests yield that capital levels are sufficient to confront a severe stress scenario. Operating income continues to be the primary contributor to the profitability of banks, which fell to 16% of capital during the first quarter of 2015. This was due to the reversal of the temporary impact of inflation on the indexation margin and a reduction in the interest margin. Bond issues by the banks contribute to the diversification of funding sources, but medium-sized banks are highly dependent on wholesale funding. Finally, the levels of capitalisation enable the materialisation of a severe stress scenario to be absorbed. [1]

Stronger productivity growth for long-term prospects

While during the 1990s, 4.7 percentage points of growth were attributed to increased productivity per year, in the past decade it reached 1.4 percentage points and last year -0.5% (Bergoeing, 2015). Economic growth in the past decade was mainly driven by investment in commodity-related sectors. Total factor productivity (TFP) growth, by contrast, was stagnant until recently. This contrasts with other large emerging economies, some of which had exceptionally rapid TFP growth. Chile's economy relies heavily on natural resources, with copper representing more than half of Chile's exports.

Figure 1.4. **Productivity growth has been negative**

2007-2014

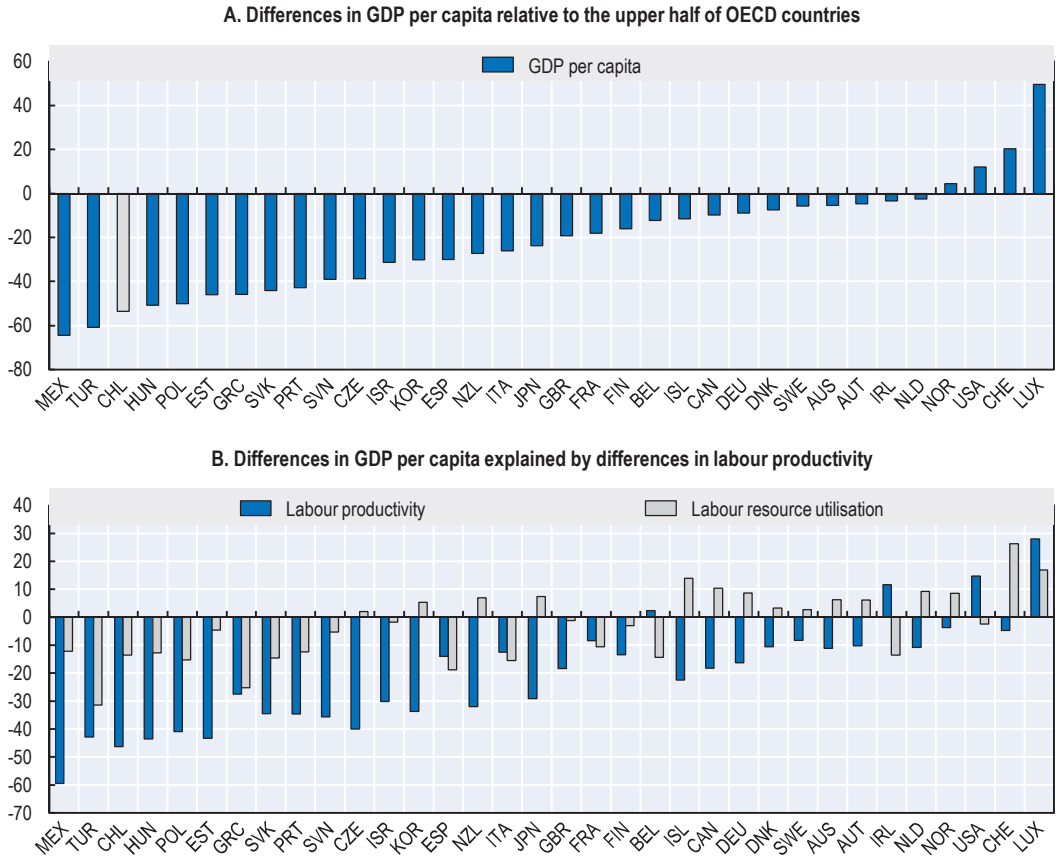


Source: Author's own calculations.

1. The severe stress scenario considers a drop in GDP in the short term (activity shrinks by 2.5% in 2015) and low growth in the medium term (1.5% growth in 2016).

Despite the large improvements of the last three decades, large productivity gaps remain, and further reforms are needed to reduce them. About 50% of the income gap between Chile and countries at the top of OECD countries can be explained by differences in labour productivity. To close economic development gap Chile needs to significantly improve productivity. Boosting productivity is very important to create quality jobs and improve well-being. In the most productive economies new technologies are developed and adopted more easily, workers have access to better wages and access to better employment opportunities, costs and prices are lower and goods are of a higher quality and greater variety, benefiting consumers.

Figure 1.5. **Chile has room to increase productivity and catch up with best performer OECD countries**



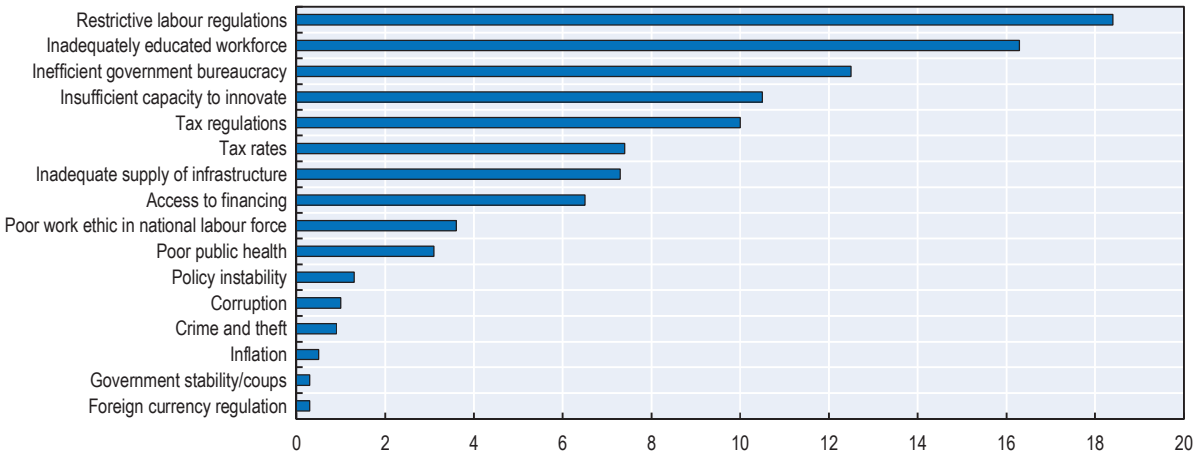
Source: OECD (2015b), *Economic Policy Reforms 2015: Going for Growth*, OECD Publishing, Paris, http://dx.doi.org/10.1787/growth-2015-en.

Improving the business environment for increased productivity growth

According to surveys, the four main problems for doing business in Chile are: i) restrictive labour regulations, ii) inadequately educated labour force, iii) inefficient government bureaucracy, and iv) insufficient capacity to innovate. Therefore, to boost productivity, Chile should make further improvements in these areas that are affecting the business environment. First, it should continue improving economic certainty, as this allows long-term investments. Second, Chile's economy needs to be adaptable to global

competition and changing global economic circumstances to weather both short-term shocks and longer-term trend changes. For example, there are questions regarding the flexibility of the labour market; hiring and firing costs are high by international standards, and labour participation relatively low, especially among women. Third, raise the quality of human capital as it appears to lag behind countries at a similar level of development, complicating skills-matching. Finally, refine the regulatory framework and improve the quality of production factors through innovative technologies and advanced production processes that can generate greater value added per hour worked.

Figure 1.6. **Restrictive labour regulations, low human capital and insufficient capacity to innovate are the most problematic factors for doing business**



Note: From the list of factors above, respondents were asked to select the five most problematic for doing business in their country and to rank them between 1 (most problematic) and 5. The bars in the figure show the responses weighted according to their rankings.

Source: Schwab, K. (2014), *The Global Competitiveness Report 2014-2015*, World Economic Forum, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf.

More inclusive and flexible labour markets

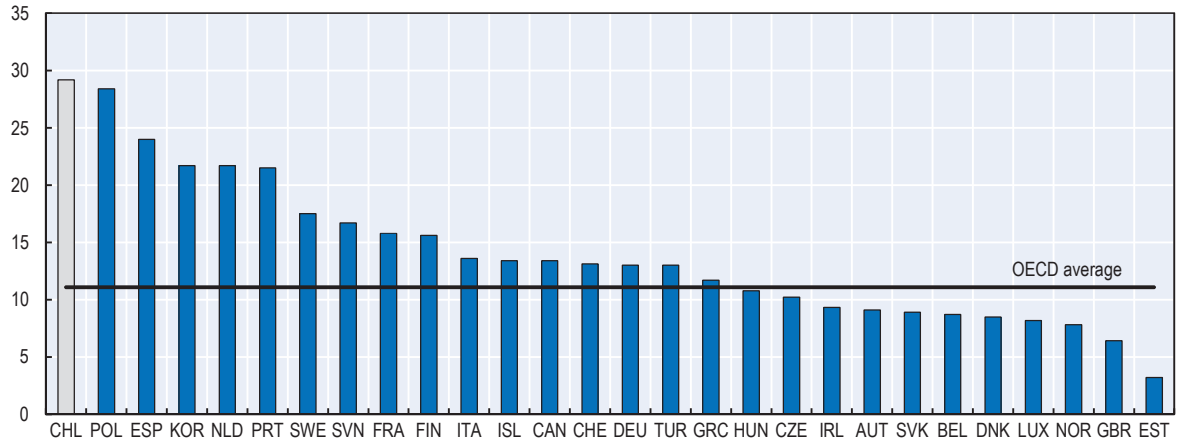
The Chilean labour market is characterised by strong inequalities and rigidities. Women's participation in the labour market is among the lowest in the OECD. Youth face particular difficulties in gaining employment. The market is segmented with far too many workers in non-regular work arrangements: many are either in a cycle of temporary work contracts, in the informal sector or work through commercial arrangements. Workers' basic skill levels remain low, activation programmes are weak, the training system does not provide adequate training for those that need it most and there are no tools to ensure that skills development is aligned to the skills the market needs.

Labour market regulations in Chile are not neutral and affect the allocation of labour across industries and corporations. Evidence shows that these regulations and institutions decrease the adjustment speed of firms that hire intensively labour that is relatively more protected, contributing to labour misallocation and affecting productivity growth (Micco and Repetto, 2014). These results imply that there may be space for efficiency enhancing labour market reforms. One aspect that should be considered is the rigidity of hours, possibly by defining the length of the workday not at the weekly level, but at the monthly or even annual level. It is necessary to modernise the organisation of working hours.

Today the law requires that they be equal in all companies, in all sectors and at any time of year. This is not only inconsistent with the reality of heterogeneous productive enterprises, so it is with the diversity of needs among workers. Also, transforming the current severance pay system into a compensation scheme that finances job loss independently of the reason for separation, possibly financed through the individual accounts of Chile's unemployment insurance system could also help improve labour allocation.

Figure 1.7. **High incidence of temporary work**

Temporary work arrangements as a percentage of dependent employment, 2013



Source: OECD Labour Force Statistics, http://stats.oecd.org/Index.aspx?datasetcode=temp_i (accessed 1 March 2016).

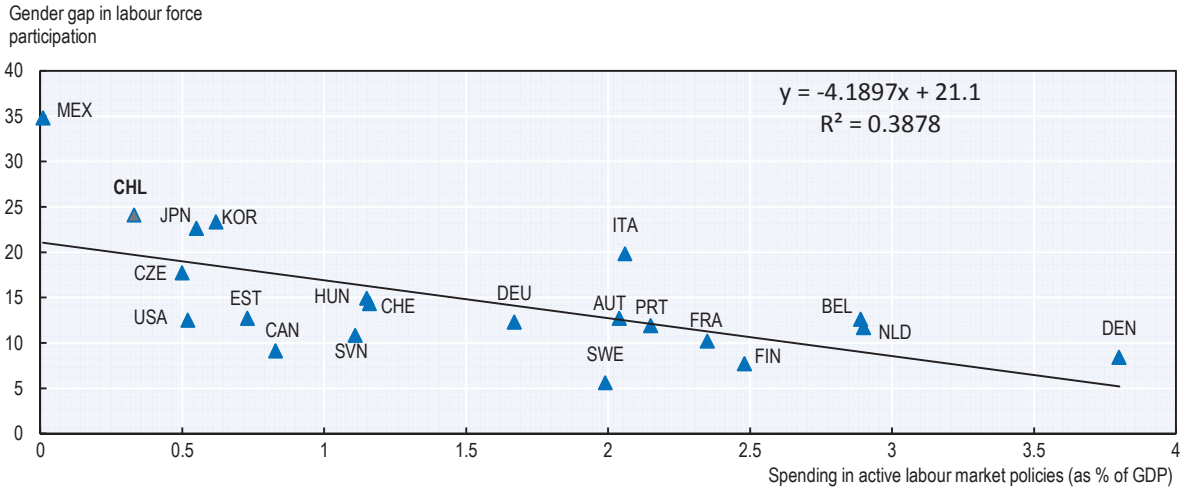
Chile is one of the OECD countries with the widest gender gap in labour participation rates. Empirical evidence suggests that reducing the gender gap can have a significant impact on growth (Thévenon et al., 2012). Bringing more women into the labour force should also reduce child poverty.

To reduce the gender gap, policies should seek to increase job market options for women, while reducing the opportunity costs of joining the labour force. Female labour supply is much more responsive to wage changes than male labour supply, affecting the hours they work but even more their decision to participate in the labour market. This is because the decision faced by women takes into account that there is a high opportunity cost (an outside option) of joining the labour force: choosing to bear children and/or become a housewife, while a partner may provide household income. In Chile, to promote female participation, part-time jobs are being encouraged (they are seen as a way to balance paid work, care and household activities). However, there are adverse consequences of part-time jobs in terms of gender equality and labour market incentives. Beyond the lack of perspectives, low probability of receiving training, high job turnover, low probability of accessing public social welfare benefits and low future pensions, women are penalised when they work part-time in formal employment.

Chile is one of the OECD countries with the lowest level of public spending devoted to active labour-market policies. Evidence suggests that active labour market policies are potentially very important to bring women into employment as the average effects of these programmes are larger for women than for men (Bergemann and Van den Berg, 2008). This is because women's labour supply is more elastic than men's, and therefore

participation in a programme that increases labour market opportunities, such as a successful skill-enhancing training programme, may subsequently lead to job offers that are acceptable. Therefore, expanding spending in labour-market programmes could contribute to increasing women's labour participation and reducing the gender gap.

Figure 1.8. **Chile spends little on active labour market policies and has a relatively high gender gap in labour force participation**



Source: OECD/Eurostat Labour Market Programmes database. http://stats.oecd.org/index.aspx?datasetcode=TEMP_I (accessed 1 March 2016).

Raising the quality of human capital

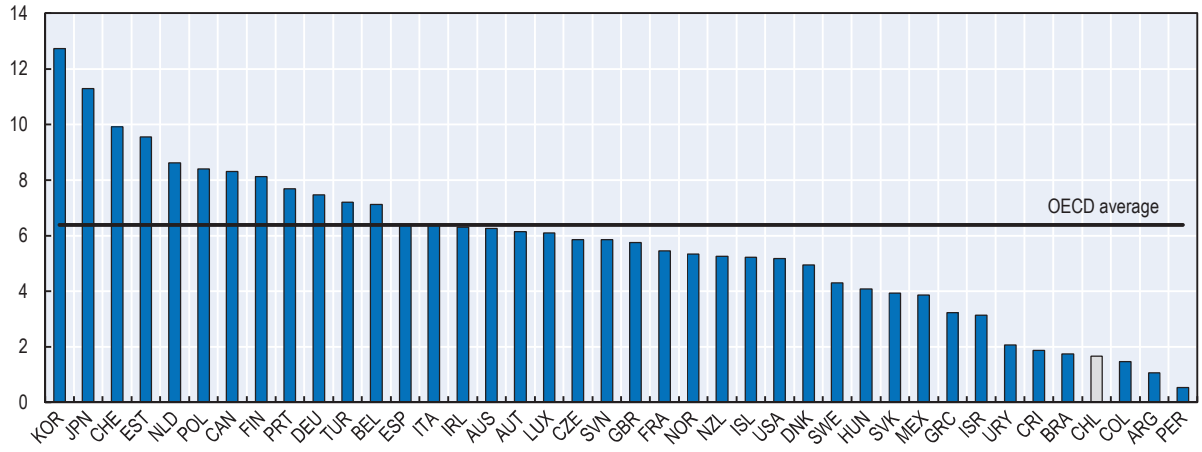
Chilean firms report that human capital is an important obstacle to productivity improvements. High-value added industries are heavily dependent on well-trained workers, especially those with postgraduate qualifications. Despite important advances in increasing the number of university graduates, Chile still lacks sufficient quantities of advanced human capital in the fields of science, technology and engineering management. Furthermore, the quality of Chile's educational system lags behind the OECD average (OECD, 2015a).

Chile performs better than the other seven Latin American countries that participated in PISA 2012, but still ranks below the OECD average. The performance gap with respect to the OECD average PISA 2012 score in mathematics is the equivalent of 1.7 years of secondary schooling. And while Chile made significant improvements in mathematics and reading between the PISA 2000 and 2009 cycles, the improvement in equity and quality decelerated in PISA 2012. Slightly more than half of 15-year-olds in Chile (51.5%) perform below level 2 in mathematics (OECD average 23.0%), meaning that they can only use basic algorithms to solve problems with whole numbers. This share has remained stable across most PISA cycles. Only about 1.6% of Chilean 15-year-olds are top-performers, and this percentage has even decreased from previous PISA cycles (Avendaño et al., 2015). The impact of socio-economic status on student mathematics performance in Chile is one of the highest among OECD and other participating countries. Moreover, Chile shows one of the highest correlations in the region between the quality of educational resources of schools and the socioeconomic status of the school's pupils.

A largely unregulated market for schools has contributed to inequitable schooling outcomes, and also to poor overall educational performance. Chile is one of the countries with the highest level of school competition, yet performance differences between public and private schools become statistically non-significant once the socioeconomic status of pupils and schools is taken into account. The government recently passed a law ending profits, tuition fees, and selective admission practices in any primary and secondary schools receiving state subsidies. New bills sent to Congress will reform early childhood and pre-primary education and the career path of teachers. These reforms will bring Chile closer to OECD best practice, ensuring that the implementation of the reforms meets the expected social, political and pedagogical objectives will be a challenge.

Figure1.9. **Raising the quality of education is key to increasing long-term growth**

Share of pupils that perform in the top quarter of pupils in PISA 2012 after accounting for socioeconomic status



Source: OECD (2015a), *Education Policy Outlook 2015: Making Reforms Happen*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264225442-en.

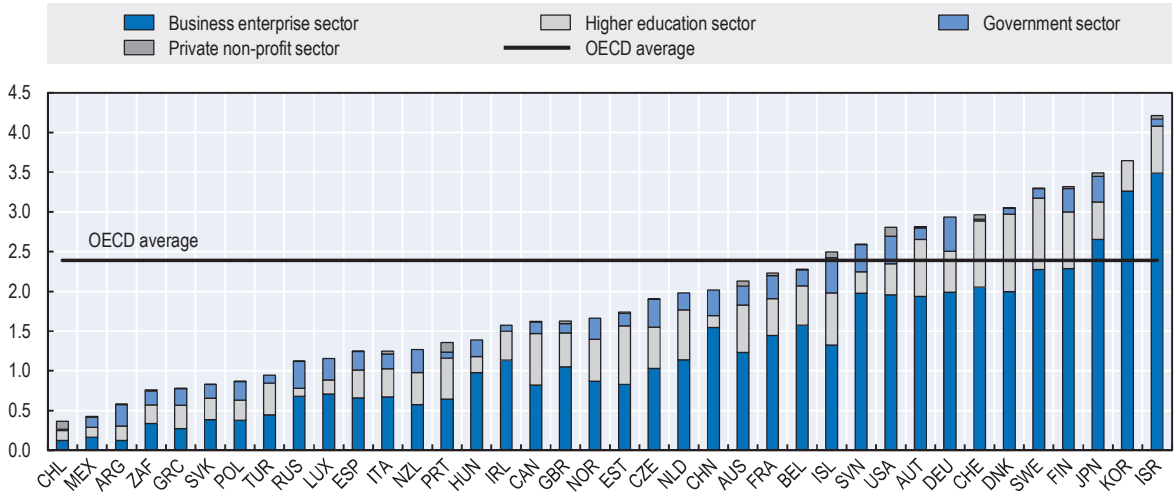
Investing in R&D and fostering the capacity to innovate

R&D intensity in Chile remains low. Although Chile's stable macroeconomic policies and trade openness provide useful preconditions for long-term investments in R&D, R&D expenditure has increased only slightly in recent years, from 0.3% in 2007 to 0.4% in 2013 (OECD, 2012). Furthermore, R&D expenditure is heavily concentrated in the publicly-funded university sector. As a result, the country scores poorly on measures of innovation outputs such as patents and top scientific publications.

To promote private participation in R&D investment, an initial tax benefit for R&D expenditures was implemented in 2008. A modification to this tax benefit in 2012 made in-house R&D activities eligible for the tax credit. Other important changes to the law include a threefold increase in the annual tax ceiling for the benefit, to USD 1.2 million, and raising the 15% cap as a share of gross income. After this modification, the flow of new patent applications increased five-fold. The existing programme is still most relevant for large firms, since the credit is only redeemable against profits. Evidence from the OECD's work on new sources of growth suggests that refundable credits can help dynamic smaller firms, including start-ups that do not yet have profits, to immediately benefit from non-refundable credits (Andrews and Criscuolo, 2013).

Figure 1.10. **Chile invests very little in R&D**

Expenditure on R&D by sector of performance, % of GDP, 2013 or latest available year



Source: OECD, Main Science and Technology Indicators database, https://stats.oecd.org/index.aspx?datasetcode=gerd_funds (accessed 1 March 2016).

The creation of the Start-Up Chile entrepreneurship programme in 2010, an initiative of the Ministry of Economy, Development and Tourism and CORFO, aims to make Chile the leading innovation hub in Latin America, along with a number of complementary programmes that help to facilitate international technology transfer, whose funding was recently boosted. The government recently announced plans to expand the Start-Up Chile programme, increasing funds by 47% and facilitating SME's access to credit through the *Banco Estado*.

Chile has several well-designed innovation promotion programmes, which seek to address a long-standing divide between businesses and universities in Chile's innovation system. But programme scale and take-up have not been large enough to make a substantial impact. In fact, less than 1% of companies in the formal sector have applied and received support from these. To boost take-up and ensure the cost-effectiveness of programmes, the authorities should design them so that they can be adequately evaluated. Based on a regular review of the programmes, those that have been positively evaluated should be enlarged and given an enhanced degree of policy stability, while those that are found to be inefficient should be closed down or revised.

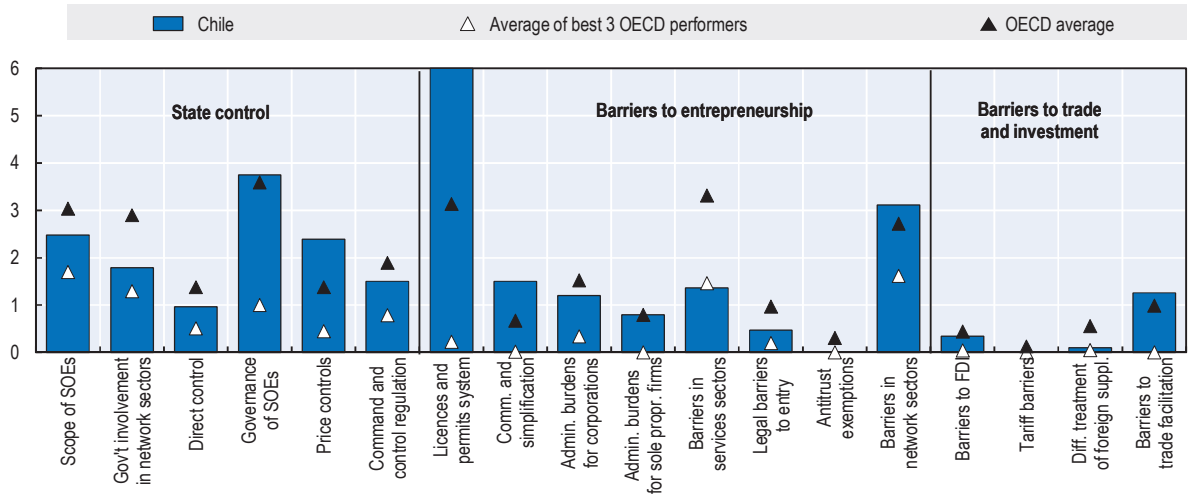
The government's Agenda for Productivity, Innovation and Growth goes a long way to addressing the fragmented institutional set-up for innovation. It includes 47 different measures, focused around promoting the diversification of production, boosting sectors with high growth potential, the expansion of programmes and resources available for early-stage start-ups, increasing productivity and competitiveness of businesses and generating a new impetus to exporting. Among the most notable of these endeavours is the creation of a Productivity Commission that will help to ensure that productivity is the focus of policymaking across the government, and help to identify policy reforms.

Refining the regulatory framework

Regulatory reform is an important part of a government's toolkit for improving economic growth. Cross-country evidence suggests that the bulk of job creation and gains in aggregate productivity come from the rapid growth of young dynamic firms (Haltiwanger, 2012). Despite improvements over recent decades, regulatory policy barriers for young firms still remain in Chile (OECD, 2012). Existing regulatory restraints, both in international trade and the domestic market, limit the possibility for adopting new technologies and hamper the re-allocative process that can help to take full advantage of new innovations. The regulatory policymaking framework lacks essential features, such as regulatory impact assessment, that could ensure that regulations are designed in the best way.

Product market restrictiveness for Chile remains above the OECD member average. The governance of state-owned enterprises can be improved and the state's involvement in business operations further aligned with best practice. For example, the government still provides pricing guidelines for road transport companies and the costs of water purification and wastewater treatment is not taken into account when setting the prices for users other than households. Regulatory procedures are very complex, involving extensive licensing requirements, and competition in some network sectors such as rail and gas is hampered by still high entry barriers.

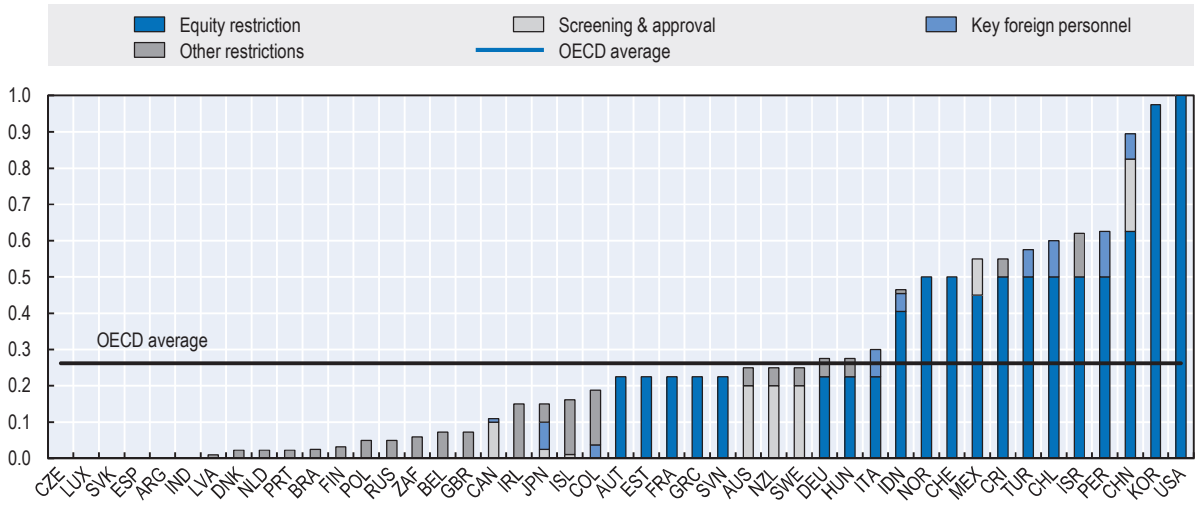
Figure 1.11. **Product market regulation remains restrictive in some areas**



Source: OECD Product Market Regulation database, https://stats.oecd.org/index.aspx?datasetcode=gerd_funds (accessed 1 March 2016).

Chile can improve the regulatory stance towards maritime transport services, and the situation for the underlying port infrastructure. Chile maintains a foreign equity limit of 49% to register vessels, along with a requirement that the majority of the Board of Directors of a shipping company must be Chilean nationals. Foreign participation in the cabotage market is restricted. These restrictions imply a high cost and affect Chile's low participation in global value chains.

Figure1.12. **Restrictions on FDI inflows into the maritime transport sector are high**



Source: OECD FDI Regulatory Restrictiveness database, https://stats.oecd.org/index.aspx?datasetcode=gerd_funds (accessed 1 March 2016).

While national regulations provide the general framework for administrative procedures and an efficient state administration, the lack of a comprehensive regulatory reform programme has reduced the possibilities to achieve even better economic outcomes and unleash resources to boost productivity. Many laws are likely to be out of date, particularly as the country has never undergone a review of existing regulations. Furthermore, most regulators prepare regulations without clear evidence of the best way to intervene, and good practices in rule-making procedures are limited.

Chile has made progress in making regulations more accessible and communicating administrative requirements. There are registries that gather all regulatory inventories and make information on the legal framework available for users. However, Chile lags behind most OECD countries in ensuring that the public can systematically participate in the rule-making process. Even though a recent law (Law No. 20.500) made public participation standard practice, specified general criteria for it, and established permanent bodies within the administration to ensure compliance, there is still no standardised practice for the whole of the state administration on how to conduct regulatory consultation, including its length, scope, timing, and underlying procedures. Apart from consultation, Chile does not have guidelines and standards for the implementation of better regulation practices. Importantly, the country does not make systematic use of Regulatory Impact Assessment (RIA), which is now standard practice in most OECD countries, which might reduce the effectiveness and efficiency of regulations. Efforts have been made to introduce some types of *ex ante* impact assessments like *Estatuto PyME*, but with limited success. The development of new regulations is therefore not compelled by the need to explain the rationale of the regulatory intervention and ensuring that benefits outweigh the costs.

Also, although Chile has made important improvements to its competition policy framework, some crucial features are still missing (OECD, 2014). Tackling these issues would be an important step towards fostering competition and, hence, encouraging firms to invest and become more innovative and efficient. Chile's 2009 competition law

supports effective policy and enforcement against anticompetitive behaviour. However, amendments to the law are needed in order to establish an effective, efficient and transparent merger control regime. Merger control constitutes an essential component of an effective competition policy, which allows assessing the impact of mergers on consumer welfare and economic efficiency. Chile's current system for reviewing mergers lacks clear merger control jurisdictional and substantive criteria, relies on general antitrust procedures which were not designed for merger control purposes, and lacks streamlined merger review powers between the Competition Authority (*Fiscalía Nacional Económica*) and the Competition Tribunal (*Tribunal de la Competencia*). Tackling these problems would allow mergers to be selected, notified and reviewed in a timely, effective and predictable fashion, to the benefit of economic efficiency and consumer welfare.

Chile should also improve the legal framework to carry out market studies. Market studies provide competition authorities with an in-depth understanding of how sectors and markets work. They are conducted whenever concerns on the functioning of a market arise, that can be caused by factors such as firm behaviour, market structure or consumer conduct amongst others. Market studies can lead to recommendations to private firms or public bodies aimed at removing any unnecessary obstacles to the working of markets, and if anti-competitive behaviours are detected they can lead to the opening of antitrust investigations. Many OECD jurisdictions are increasingly relying on this tool to promote competition.

The current government is committed to reforming the competition law framework to ensure effective competition enforcement. A draft competition bill was submitted to Congress in March 2015, covering a new set of sanctions for cartels, a reformed system for merger control and market studies. The proposed reform is ambitious and in line with OECD best practices and OECD recommendations to Chile. The core of the reform includes a proposal to increase the effectiveness of sanctions against illegal cartels: it promotes the introduction of criminal sanctions for executives and a higher ceiling for monetary fines. The OECD has consistently promoted a strong and effective system of sanctions to stamp out hard-core cartel behaviour, which is considered the most egregious violation of competition. The new bill would also address the above mentioned concerns by introducing a more effective and transparent merger control regime and granting the *Fiscalía Nacional Económica* formal powers to perform market studies.

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Chapter 2

Considering Chile's path towards regulatory reform

Chapter 2 explains the core principles and legal instruments that set the policies the government of Chile implements to improve its regulatory quality. In doing so, it discusses the high regulatory production and the absence of a clear figure on the total national regulatory stock. The chapter recognises that regulatory reform is a relatively new concept in the Chilean administration. However and despite the fact that Chile does not have a comprehensive regulatory reform policy and programme, the government has various administrative and legal arrangements that support the preparation and implementation of regulation, as well as control quality mechanisms that frame the interventions of regulatory institutions. Finally, it describes the recent and current regulatory reform initiatives implemented by the Chilean government, highlighting the reforms done in the environmental regulation, competition advocacy, and international regulatory co-operation.

The administrative and legal environment for regulatory reform in Chile

Chile has been one of the most stable countries in the last few years, making progress in economic prosperity and lowering poverty. Per capita income more than doubled between 1990 and 2010 to become the highest in Latin America. Between 1988 and 1997, Chile grew at an average annual rate of 7.9%. In 1998 growth slowed to 3.2% and in 1999 the economy contracted (-0.8%). Then, from 2000 to 2003, growth returned, and in 2004 and 2005, real GDP rose sharply by 6.2% and 6.3%, respectively. GDP growth averaged 5.8% annually through 2010 and 2012. Balanced fiscal accounts have been complemented by low inflation, an open trade regime and favourable legislation for foreign direct investment (FDI). The key role of the Ministry of Finance in ensuring sound macroeconomic and budget management has allowed the country to continue with reform.

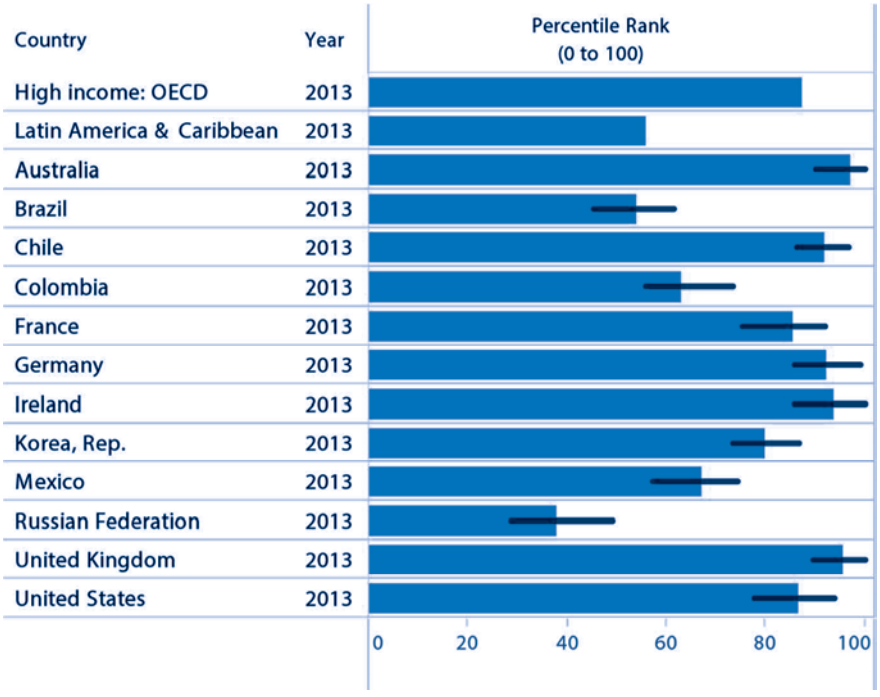
The opening of the economy has centred mainly on resource-based sectors, primarily copper mining and sub-products and the agro-food sector. Since the mid-1970s, Chile has undertaken a series of key reforms that reshaped the role of the State in the economy. The government of Chile decided to eliminate price controls, privatised public enterprises and opened up the Chilean economy to foreign trade, setting up the basis for the economic transformation of the country.

Macroeconomic stability has been a key factor of growth. Historically, low unemployment has resulted in labour-market tightness, but inflation remains contained. Strong domestic demand and weakening foreign markets have pushed the current account balance into deficit, which has been financed mostly through FDI, thus limiting the risk of capital flow reversals. Thus, Chile had a swift recovery from the global economic and financial crisis, which has supported gains in employment and real wages.

The strength and reliability of Chile's institutions have also had a favourable effect on growth. The quality of institutions and the stability of Chile's regulatory framework are comparable to those of OECD countries (see Figure 2.1), even if these comparison tools should be assessed with care and they do not offer evidence of the policy outcomes, but rather the processes and institutional set-up required for regulatory activities.

Chile is a unitary country, according to Article 3 of the Constitution of the Republic of Chile. This means that the only political and government centre lies at national level, and only the executive and the legislative have concurrent legal competences in the country. However, as happens in most Latin American countries, the executive power has a prevailing role in the design, implementation, supervision and monitoring of regulation. The regulatory practice and administrative culture are linked to a highly hierarchical approach within the public administration.

Figure 2.1. **Regulatory quality in Chile**



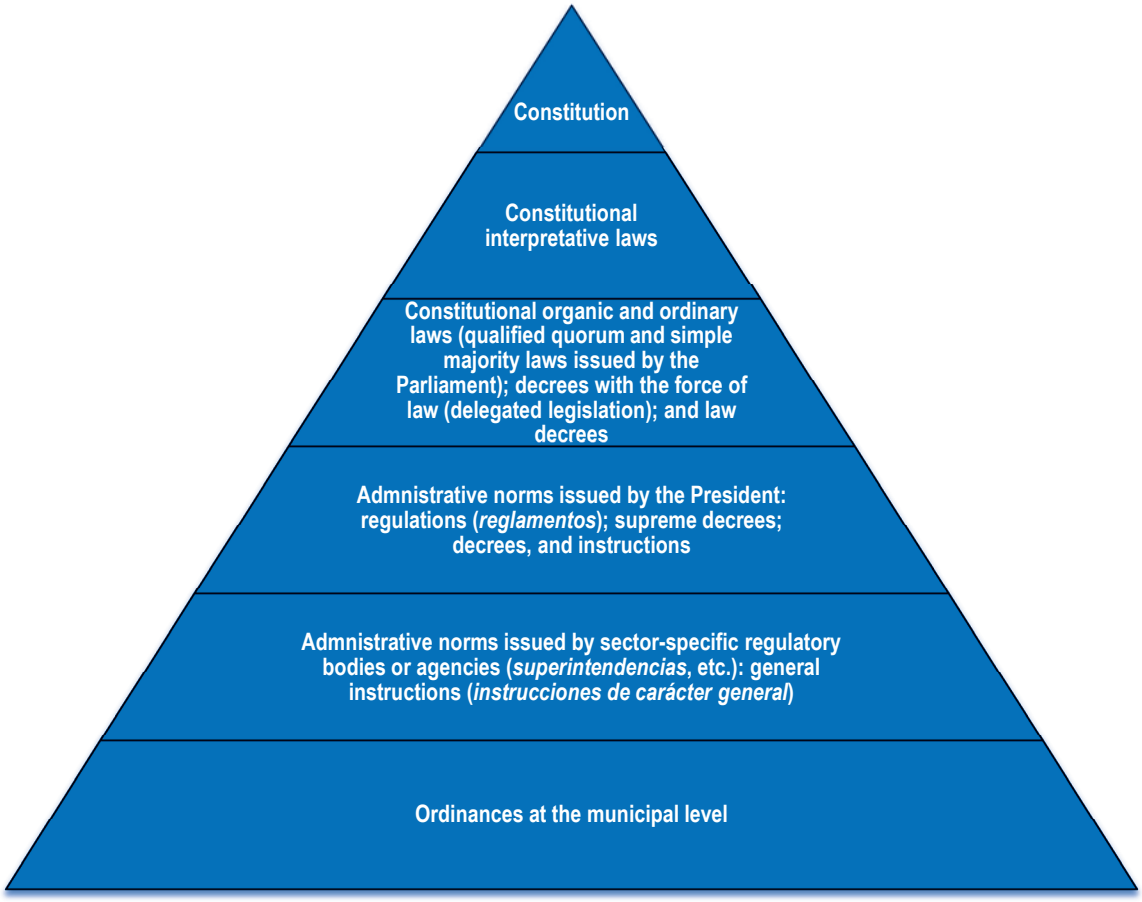
Note: The Worldwide Governance Indicators (WGI) are a research dataset summarising the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organisations, international organisations, and private sector firms. The WGI do not reflect the official views of the World Bank, its executive directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Each of the six aggregate indicators, such as regulatory quality, are reported in two ways: (1) in their standard normal units, ranging from approximately -2.5 to 2.5, and (2) in percentile rank terms from 0 to 100, with higher values corresponding to better outcomes. This results from using an Unobserved Components Model (UCM) to construct a weighted average of the individual indicators for each source.

Source: Kaufmann D., A. Kraay and M. Matruzzi (2010), "The Worldwide Governance Indicators: Methodology and Analytical Issues", *Worldwide Governance Indicators*, http://info.worldbank.org/governance/wgi/index.aspx#reports.

The Constitution establishes different types of laws, in relation to the matter they regulate, the procedure to be approved and the quorum: constitutional interpretative, constitutional organic, qualified quorum and simple majority.[1] In addition, the Constitution also refers to the legal framework that can include decrees with the force of law, laws issued by the President under specific powers delegated by Congress, regulations (*reglamentos*), decrees and instructions.[2] The secondary regulation, which is approved within the executive and helps implementing the primary regulation, offers the possibility for ministries and other regulatory bodies to have a degree of freedom in what type of instrument they choose to intervene. The hierarchy of legal norms in Chile is presented in Figure 2.2.

Figure 2.2. **Legal norms in Chile**



Source: Author's interpretation based on research.

Regulatory production is high and there are no clear figures on the total national regulatory stock. Laws are enumerated consecutively by the Legal Division of the General-Secretariat of the President´s Office (*Ministerio de la Secretaría General de la Presidencia*, SEGPRES), which helps to understand the number of laws approved year by year in Chile (see Table 2.1). The number of laws is rather stable in Chile, and it also includes laws that amend or repeal other laws currently in force. Secondary regulations, on the contrary, are unknown so far, as most of it is produced at ministry level, and there is no centralised control on the number of regulatory instruments in the country. They are, however, available at a centralised register of laws (see section on *centralised registries*). The Congress Library estimated around 9 000 instruments of secondary regulations (resolutions, decrees, etc.) are produced annually. Some uncertainty remains for the legal production at the municipal level.

As in most countries, the executive is the main producer of regulation. In the law-making process, both the executive and the legislative have the prerogative to initiate a law proposal. However, the Constitution limits the legislative initiative to members of Congress in issues such as public expenditure, taxes, creation or reform of civil services, etc. The President has exclusive initiative in certain (important) issues: taxes, creation of new public agencies or public employment, matters concerning the state's finances, matters regarding social security and collective bargaining, among others.

Table 2.1. **Number of new laws at the national level in Chile**

Year	Number of laws
2001	78
2002	68
2003	67
2004	69
2005	95
2006	62
2007	87
2008	79
2009	94
2010	81
2011	80
2012	92
2013	69
2014	94

Source: OECD (2011), "Regulatory Management Indicators: Chile", OECD, Paris, www.oecd.org/gov/regulatory-policy/47827209.pdf; and www.senado.cl/appsenado/templates/tramitacion/index.php.

Despite a larger number of proposals from the legislative, most of those approved have their origin in the executive. According to the Constitution, the President of the Republic can use the law initiative through a message (*mensaje*) and the Deputies and Senators can table a motion (*moción*). Both messages and motions have to be presented in writing with an explanation of the reasons and clarify the various articles contained in the law. Messages, in addition, should also include the source and the amount of financial resources needed, in case expenses linked to the law are implied in the national budget.

In the rule-making process, ministries that are responsible for implementing the laws through regulation support the President. They are responsible for drafting regulation that is then checked against a legal quality control (see Chapter 3). Other type of institutions, such as superintendencies and commissions, also prepare regulations, but the quality control check is rather weak. Regulatory reform is a relatively new concept in the Chilean administration. Despite the fact of not having a comprehensive regulatory reform policy and programme, the government of Chile has various administrative and legal arrangements that support the preparation and implementation of regulation, as well as control quality mechanisms that frame the interventions of regulatory institutions. The following sections will be devoted to assessing the current practices and mechanisms in place.

Regulatory policies and core principles

The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012) advises governments to "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."

Regulatory policy is defined as "the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making" (OECD, 2012). Regulatory policy is integral to a formal, reliable process to link policy goals and policy actions with regulation.

Box 2.1. **The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance**

The 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance* provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards; it advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes; and it calls for a "whole-of-government" approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication, and co-operation to address the challenges posed by the inter-connectedness of sectors and economies. The Recommendation advises governments to:

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 online) 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 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.

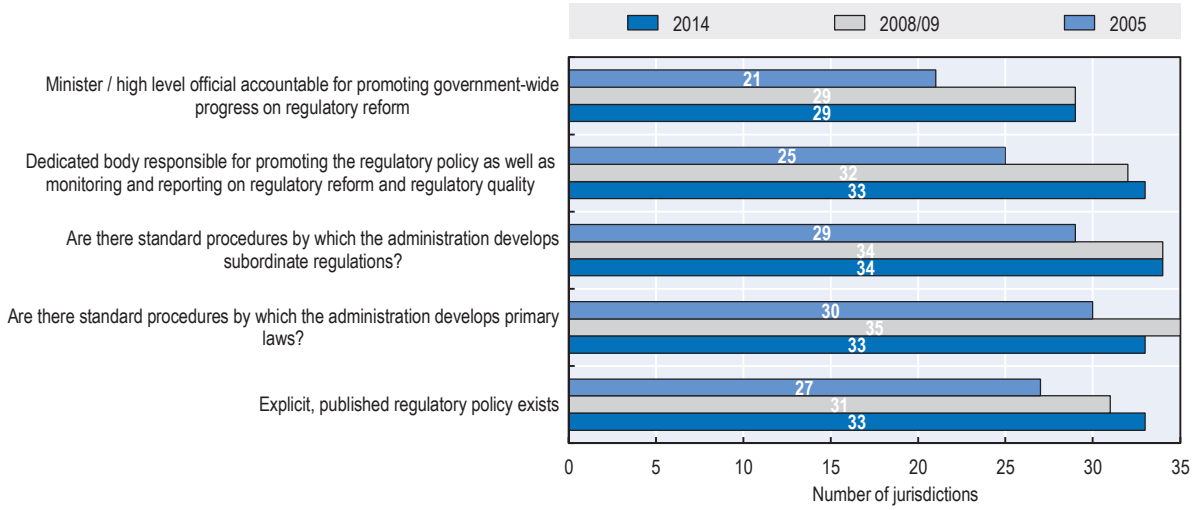
Box 2.1. **The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance** (*cont.*)

10. Where appropriate, promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national 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 sub-national 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), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en.

An effective regulatory policy has three basic components that are mutually reinforcing: it should be adopted at the highest political level; contain explicit and measurable regulatory quality standards; and provide for continued regulatory management capacity.[3] Most OECD countries have adopted an explicit whole-of-government approach to regulatory policy (see Figure 2.3).

Figure 2.3. **Adoption of an explicit whole-of-government regulatory policy in OECD countries**



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.

Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Achieving a whole-of-government approach to regulatory quality is not an easy and quick task. Many OECD countries have struggled with this endeavour for several years, and there is no recipe that could be translated into another country´s context. However, there are important lessons that can be drawn from international experiences. Box 2.2

includes some ideas of key components of regulatory governance and how OECD countries have built programmes over years in order to address this issue.

Box 2.2. **Building "whole-of-government" programmes for regulatory quality: Key issues and some OECD experiences**

The objective of regulatory policy is to ensure that the regulatory lever works effectively, so that regulations and regulatory frameworks are in the public interest. Effective regulation can help countries to achieve sustainable growth, to find ways to handle complex and interrelated policy areas, to anticipate and manage risks more effectively, and to regain the trust of their citizens. Achieving that regulation helps mitigating those challenges that government face happens when countries manage to strengthen regulatory governance and manage to close the loop between regulatory design and evaluation of outcomes. This depends on a series of preconditions, among those:

- Institutional leadership and oversight;
- Evidence-based impact assessments to support policy coherence.
- Paying more attention to the voice of users, who need to be part of the process.
- Reviewing the role of regulatory institutions and the balance between private and public responsibilities for regulation with a view to securing accountability and avoiding capture;
- A renewed emphasis on consultation, communication, co-operation and co-ordination across all levels of government and beyond, including not least the international arena; and
- Strengthening capacities for regulatory management within the public service.
- Tools to evaluate and measure performance and progress.

Several OECD countries have tried for decades to ensure that their regulatory systems operate under those premises, very few have managed to achieve the comprehensive package required to achieve good regulatory practices. The development of an effective regulatory policy is an evolutionary process, which involves a broad scope of issues. Some countries have been grappling with the issue of where and how to start the process of embedding regulatory policy as a core element of good governance. An incremental approach has worked in some settings, such as the Netherlands or Denmark; some others – very few – have used a more comprehensive approach, such as the United Kingdom, Australia or Mexico.

Source: OECD (2010a), "Regulatory Policy and the Road to Sustainable Growth", OECD, Paris, www.oecd.org/regreform/policyconference/46270065.pdf.

There is no regulatory policy and programme in Chile that could be followed by all government bodies, neither at central nor sub-national levels. The regulatory sectoral policies are not co-ordinated so principles and quality criteria are not followed in a sustained and orderly manner. At the sectoral level, efforts to include core principles of regulatory policy have been identified and promoted, but they have tended to be limited to transparency measures or some *ex post* quality control mechanisms.

Preparation and implementation of regulation does not follow standard procedures, as every institution is responsible for its own regulatory interventions, in response to its own responsibilities. There are, however, initial efforts to ensure coherence and co-ordination.[4]

Important elements of initial regulatory reform policies already in place are contained in the following existing legal documents:

- Political Constitution of the Republic of Chile. The Constitution is the highest hierarchical legal instrument in the country. It clearly establishes the matters that have to be regulated through a law and which type of law has to be used in specific circumstances. It also sets out the competences among the different powers (executive, legislative and judiciary).
- Law No. 18.575 establishes the Constitutional Organic Act for the Administration of the State includes the principles that rule the activities of the public administration in Chile. It also regulates the origin of judicial review of administrative acts.
- Law No. 19.880 establishes the mechanisms of administrative procedures that institutions of the State administration should be subject to (Administrative Procedure Law). Administrative procedures are understood as any process that ends in a written decision adopted by the public administration that transforms into a supreme decree, a resolution, a decision, or an agreement. It covers the administrative procedures of ministries, superintendencies, governorships and public services that enforce policies, as well as the Comptroller General of the Republic, the Army and Security Forces, regional governments and municipalities. It provides a reference framework for criteria, including the silent is consent rule, and minimal standards of the procedures by the administration in relation to citizens, making those relationships more transparent and predictable.
- Law No. 20.500 on associations and citizen participation in the public administration, enacted in 2008, includes consultation forms within the process to prepare regulations. The law establishes that the State should ensure different modalities for citizen´s participation in its policies, plans or programmes, and it should offer information for citizens to participate.
- Law No. 20.285 on access to public information has closed a gap related to transparency in the administration, as it introduced a more transparent and open system for citizen´s participation. In particular, the law has introduced the obligation for State administration bodies to keep available and updated information on their websites, including the current legal framework they apply, the formalities they provide to businesses or citizens and information on citizen´s participation, such as public consultation. The law has also introduced a sanctions system in case those obligations are not met.
- Law No. 19.882 on the new human resources policy for public servants includes the system of high-level policy management (*sistema de alta dirección pública - ADP*) that regulates the recruitment of public servants in managerial positions in the implementation of public policies or service delivery. Senior civil servants (SCS) are considered a separate group and there is a centrally defined skills profile that applies to some organisations. The management of their careers and performance is accentuated and they are employed for a specific term which is shorter than for regular staff. They are recruited through a centralised system that undertakes the selection, training, evaluation and development of SCS. A good proportion of management positions are open to external recruitment and assessment centres are regularly used, with an independent Council overseeing the process and making final recommendations. The president and public service

directors are in charge of the appointment and dismissal of SCS. The minister and independent Councils have certain influence over the appointment/dismissal of general directors (highest level) and deputies in agencies (second highest level). The minister and others in the ministry have influence over the appointment/dismissal of other management levels. All advisors to the ministry's leadership turn over with a change in government, as well as many general managers, many deputy general managers and a few heads of division. A change of government normally implies changing some of the SCS.

- Law No. 20.416 that sets special norms for SMEs, published in February 2010, introduced a regulatory framework for SMEs. This law, known in Chile as the SME Statute (*Estatuto PyME*), officially introduced a form of *ex ante* assessment system in the country that is currently under way (see chapters 4 and 10). Article 5 of the SME Statute establishes a system according to which estimates about possible social and economic impacts of new or existing regulations affecting SMEs can be identified prior to implementation. These estimates are designed to consider the costs and benefits of proposed regulations, in terms of compliance.

Initial elements of core principles of regulatory quality are found in Chile. But much remains to be done in order to ensure that institutions of the State administration follow agreed procedures and core principles in the design and implementation of regulations. Current practices vary, for instance in terms of consultation or the use of the SME Statute, without ensuring their systematic application in the way regulations are prepared or implemented.

Recent and current regulatory reform initiatives

Chile has made recent improvements in gradually introducing regulatory quality policies and principles. For instance, in early 2003, Law No. 19.912[5] in relation to the requirement for public information on technical regulations imposed by the World Trade Organisation was adopted and this introduced transparency principles in information exchange with interested parties and the need to consult on regulatory proposals.

In 2009 the Inter-American Development Bank contributed to the discussion on State reform in Chile and the idea of creating a quality agency for public policies was further elaborated, as this had been one of the main proposals of the government of President Michelle Bachelet. At that point, the government of Chile recognised the need to have an independent body in charge of measuring the impact of public policies. This would include not only *ex post* evaluation of programmes and policies, but also *ex ante* analysis of regulatory proposals and *ex post* analysis of existing regulations (Ferreiro, and Silva (2009). In 2012, additional work (Belliolo et al., 2012) was conducted to propose an institutional design for such an agency, supporting the independence and accountability mechanisms that should frame its creation, but always focusing on public policies and programmes. In January 2014 the government of President Sebastian Piñera sent a bill to Congress to create the agency, but it was withdrawn.

In 2010 the Ministry of Economy, Development and Tourism introduced the SMEs Statute through Act No. 20.416,[6] which implemented the use of a form to establish the economic impact of regulatory proposals on SMEs. Regulation No. 80[7] from 2010 established that all legal interventions affecting SMEs should be accompanied by an explanation of the preparatory work carried out to support the regulatory intervention

making it available for the public, showing a simple explanation of the possible economic and social impacts on SMEs.

In February 2014, the government of President Sebastian Piñera circulated Presidential Instructions to all ministries requesting them to introduce good regulatory practices. Such good practices are: publication of draft regulatory proposals and regulations; promotion of plain language in the preparation of regulations and preparation of guidelines to explain the purpose, benefits and costs of regulations; conduct of public consultation in the preparation, modification or repeal of regulations; use of RIA in the preparation of draft regulatory proposals; and the periodic review of regulations.

In addition to the promotion of regulatory good practices, the Presidential Instructions advised regulators to send to the Legal Division of SEGPRES, in the preparation of supreme decrees, the following documents: the legal foundation that justifies the supreme decree, identification of possible existing regulation in that field, if co-ordination and dialogue with other institutions took place in the preparation of the draft supreme decree, if consultation was undertaken or not and the reasons for that, if there are costs associated with the draft supreme decree, the objective to be met by the regulation, the results of possible economic and social impact assessments, and the way the supreme decree would be implemented.

In May 2014 the Ministry of Economy, Development and Tourism proposed an Agenda for Productivity, Innovation and Growth.[8] The Agenda should be executed during the term of President Michelle Bachelet from 2014 to 2018. It contains 47 measures, 11 law proposals and 36 administrative initiatives, with a budget of USD 1 500 million. The Agenda has four main strategic objectives: to promote productive diversification, to support sectors with high growth potential, to increase productivity and competitiveness of businesses and to generate a new export boom.

The main strategic objectives are organised around seven lines of action:

1. Strategic investments and sectoral development plans.
2. Infrastructure for new developments.
3. Financing and management support for SMEs.
4. Support entrepreneurship and innovation.
5. Efficiency of regulation and in the offer of public services.
6. Better markets.
7. New institutionality.

One of the main points of the agenda refers to the need to promote regulatory governance in order to assess the quality of regulations based on clear technical criteria and good practices. Measure 33 of the Agenda considers the creation of a special unit in charge of supervision, evaluation and co-ordination of regulatory quality in the national administration. The unit would undertake assessments of new and existing regulations, it would promote coherence and consistency among regulations and it would reduce unnecessary regulations to promote social welfare. These are initial ideas to integrate a more systematic and institutionalised approach to regulatory governance and to link it to productivity, innovation and growth.

As part of the measures already implemented, the government of Chile has set up a National Productivity Commission (*Comisión Nacional de Productividad*), which is a permanent body in charge of advising the government on productivity issues. The identification of regulatory constraints to increase productivity and recommendations to overcome them is among its main functions, which stress the relevance of ensuring that regulatory frameworks are aligned with policies promoting productivity and growth. Two of the main areas where the Productivity Commission will concentrate its activities are an assessment of productivity issues in the mining sector and reviewing previous productivity agendas of Chilean national institutions. Among OECD countries, the case of Australia stands out as a successful experience in linking regulatory reform to productivity and growth, providing institutional support for policy coherence, in addition to other countries that have set up similar institutions (see Box 2.3).

Box 2.3. **International experiences of regulatory policy and productivity: Australia, Denmark and Norway**

According to Banks (2015), "policies that promote productivity can be difficult for governments to devise and even more difficult for them to successfully implement, given uneven political pressures and fragmented administrative arrangements." This is why establishing public institutions that not only help governments identify the right policies, but that can also help educate the community about what is at stake is essential. For institutional arrangements to work, some features have to be carefully designed, notably: independent governance, transparent processes, solid research capacity and a frame of reference focused on improving economy-wide outcomes. Several OECD countries have made progress in this front and productivity has been the focus of some of the most innovative institutions to provide evidence-base for reforms.

Australia is a model framework among OECD countries for the application of regulatory reform strategies, as it has more than 20 years of experience in the application of regulatory management systems to improve regulatory quality supported by institutional arrangements. With a few exceptions, the key features for regulatory management that are promoted by OECD have been adopted and reinforced over time, and a number of novel approaches have also been developed. But the experience of Australia also demonstrates that constant and renewed efforts are necessary to deliver results. Australia, like all other OECD countries, has found that the process of reform itself requires constant re-invention.

The Business Regulations Review Unit (BRRU) was established in 1985 within the Federal Department of Industry, Science and Technology with responsibility for advising the government on proposed changes to regulation. In 1989 the BRRU was renamed the Office of Regulation Reform (ORR) and moved to the independent Industry Commission reflecting an emphasis by the government on reducing the cost of regulation for business, and in 1998 the Industry Commission became the Productivity Commission. The Australian Productivity Commission (PC) is a major source of innovative policy advice and analysis to the Australian government. It focuses on developing policy advice to raise Australia's level of productivity and standard of living. The PC is an independent research and advisory body that gives counsel to the Australian government on a range of economic, social and environmental issues that affect the welfare of Australians. Its mandate is to improve the productivity and performance of the economy, taking into account the interests of the community as a whole, having regard to environmental, regional and social dimensions; not just the interests of particular industries or groups.

The PC is an advocate for reform and an authoritative source of advice on reform opportunities and strategies for policy implementation. Importantly, the scope of the Commission's work covers all sectors of the economy, including the public and private sectors

Box 2.3. **International experiences of regulatory policy and productivity: Australia, Denmark and Norway** (*cont.*)

and Commonwealth as well as State and Territory responsibilities. Primarily, the Commission undertakes applied economic analysis of policy issues with a focus on ways of achieving a more productive economy as the key to higher living standards. An important function of the PC is modelling the economic costs and benefits of alternative policy options. It may make recommendations on any matter that it considers relevant and it is up to the government to determine how to use the advice provided. The majority of its recommendations have been accepted. The PC has undertaken public inquiries on a wide range of topics including: the impact of competition policy reforms on rural and regional Australia, pro-competitive regulation of the telecommunications industry, assistance for Australia's automotive and textile clothing and footwear industries, cost recovery arrangements for government agencies, the impacts of legalised gambling and public support for science and innovation.

Denmark established in early 2012 a Productivity Commission, comprised of a group of senior representatives of business and academia, with its own secretariat. It was established by the government with a broad mandate to analyse the causes of poor productivity performance in that country and to make recommendations to improve it, both in the public and private sectors. It was required to consult widely and issue interim papers for public discussion. Its first report was broad in scope, with subsequent ones tackling particular areas seen as crucial to raising productivity, including a final major report in late 2013 on the tertiary education sector. The Commission's reports have been influential. Its findings and recommendations continue to be widely debated and discussed in Denmark, as well as in other Scandinavian countries facing similar issues.

The Norwegian Productivity Commission was set up by **Norway** in 2014 in response to a perceived need to reverse the slowing of productivity growth relative to labour costs. It is funded by the Finance Department and has a secretariat drawn from various ministries. It was inspired by the Danish equivalent, and the chair of Denmark's body was also appointed to the Commission, which is chaired by a respected Norwegian academic economist. Its work is to occur in two phases. The first, reflected in a report that was released in February 2015, involved a detailed analysis of Norway's productivity performance and contributors to its relative decline. The second, current phase, is focussing on more specific policy actions that are needed. The Commission is required to consult publicly and has been given a year to complete each phase of its work.

Source: OECD (2010b), *OECD Reviews of Regulatory Reform: Australia 2010: Towards a Seamless National Economy*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264067189-en; Paris; Banks, G. (2015), "Institutions to Promote Pro-Productivity Policies: Logic and Lessons", background paper presented to the OECD Global Dialogue on the Future of Productivity in Mexico City, 6-7 July.

In some ministries, such as Agriculture or Transport and Communication, regulatory units have been established to improve the preparation and implementation of regulations. For instance, the Legal Unit in the Ministry of Agriculture is composed of lawyers and technical specialists that carefully look into the technical basis of regulation, as well as to the legal consistency and coherence with national and international regulations. The Under-Secretariat of Transport has created a Regulatory Committee that produced a regulatory agenda and ensured co-ordination and transparency in the preparation of regulatory interventions.

Two areas in which good regulatory practices have been improved are in environment and competition policies.

Environmental regulation

One of the areas where Chile has made progress in improving the quality of sectoral regulation is the environmental field. In 1994, Law No. 19.300 on the general basis of the environment, the Environmental Act, was issued and a system for environmental policies and regulations was designed. This included the various instruments for environmental management, such as emissions and environmental quality norms, as well as a compulsory procedure to prepare norms in the environmental field. Thus, a technical and economic study, e.g. an environmental impact analysis called AGIES (see chapter 4), was included as a tool to improve environmental interventions. The Law also included setting up an Environmental Impact System (*Sistema de Evaluación de Impacto Ambiental*) for all projects or activities with an impact on resources, health or waste management, among other criteria.

In addition, the environmental field has benefited from an organised and systematic rule-making procedure in which priorities are prepared through an Environmental Strategic Programme that establishes the required interventions. The initial phase includes the preparation of technical studies and the AGIES, setting up a working group and a wide-ranging technical committee including stakeholders, academia and civil society representatives that can follow up the technical discussions and the preparation of the draft proposal. Public consultation is then organised to discuss with different groups, with the Ministry of Environment typically receiving several comments on the draft proposal, as interested parties participate actively in the regulatory process. Once the proposal has been approved, the Ministry makes available a Public Board of Norms, which provides information on the statute and development of each norm.

Law No. 20.417 improved Law No. 19.300 by creating an institutional arrangement mechanism based on a multi-sectoral approach to address environmental issues in a co-ordinated manner. A Council of Ministers is in charge of taking relevant environmental decisions, in addition to ensuring public consultation as part of the process of environmental impact analysis. In addition, secondary regulations in the environmental field were modified to ensure that an e-PAC,[9] an electronic on-line platform, was used in the public consultation process and all information on the impact analysis process is public and accessible for any citizen interested in knowing how the decision is evolving. Citizens and businesses have 60 days to participate in the public consultation process by making comments on the environmental impact analyses.

Competition advocacy

Competition policy and advocacy are centralised at the national level in Chile. The enforcement of the Competition Law is the responsibility of the National Economic Prosecutor (*Fiscalía Nacional Económica*, FNE). Its duty is to defend and advocate for competition in all markets or productive sectors of the Chilean economy. Under the current system, the FNE submits complaints to the Free Competition Defence Tribunal (*Tribunal de Defensa de la Libre Competencia*, TDLC) for adjudication and decision. The Ministry of Economy, Development and Tourism is responsible for competition policy in the country.

The TDLC, which decides matters and orders remedies and sanctions, is an independent judicial body, subject to the supervision of the Supreme Court of Justice. A Chief Judge or Chairman heads the TDLC, and it has four expert members, or *Ministros*. All of them are appointed for six-year terms. The TDLC has two economists and three lawyers. The President of the Republic appoints the Chairman from a list of five candidates proposed by the Supreme Court, selected through a public examination of their

qualifications. The Central Bank Council appoints two members, and their qualifications are subject to public review. The remaining two members are appointed by the President of the Republic, from two lists with three candidates on each list, proposed by the Central Bank Council, and also selected through a public review of their qualifications.

The National Economic Prosecutor heads the FNE, which investigates and brings enforcement cases. The Prosecutor, who must be a lawyer, is appointed by the President of Chile from a list of candidates chosen after a public review process, which is handled by the agency in charge of recruiting high level public officials (*Alta Dirección Pública*). The FNE must investigate all valid complaints. It may initiate an investigation *ex officio*, and it may undertake sectoral investigations of particular markets. No special regulations govern FNE investigations. General rules for administrative processes are set out in the Administrative Procedure Act and the General Basis for Fiscal Administration Act. The FNE also applies an internal manual of procedural guidelines. Legal amendments to the Competition Law gave it stronger powers of investigation, such as a "dawn raid" and wiretapping. These require authorisation from the TDLC and an order from a judge of the Court of Appeals.

Competition advocacy is conceived in broad terms. Advocacy activities can include testifying, making submissions or issuing papers to the legislature, ministries, courts, sectoral regulators or municipalities, or making speeches to professional and trade associations, academic institutions and conferences and writing articles for publication. Even holding press conferences and publicly explaining the importance and implications of competition and market principles could be considered advocacy.

The Competition Law provides specific advocacy powers. The FNE may pursue non-contentious advocacy before a sector regulator or public authority. If the regulator rejects the FNE position, the FNE can file proceedings before the TDLC. The TDLC can also act on its own initiative to issue recommendations to eliminate regulatory constraints on competition. In some sectors, the TDLC also has the power to determine when competitive conditions require regulatory intervention to set prices. The competition institutions review the competitiveness of the electricity and telecom markets and determine whether rates are free or fixed. A proceeding to revise price regulations in the telecom industry has not been completed, after a decision from the regulator indicating its intended objective of liberalising this market.

The FNE may assess the potential impact on competition of legislative proposals. It may do so in response to requests from Congress or individual congressmen, or on its own initiative. This has happened on rare occasions.

International regulatory co-operation

Chile has recently integrated fora where regulatory reform initiatives are shared among various countries. Within the OECD, since its full membership, it benefits from the work of the OECD Regulatory Policy Committee. The regulatory reform approach has been integrated gradually into its trade policies. In the framework of APEC, Chile has hosted some technical activities. Chile, however, does not have formal co-operation agreements on regulatory reform with any other country.

In the framework of the Trans-Pacific Partnership agreement (TPP)[10] and the Pacific Alliance (*Alianza del Pacífico*, AP),[11] some chapters on regulatory reform have been included. For instance, a whole chapter on regulatory coherence has been integrated into the TPP, requiring countries to have a more open and transparent regulatory process, based on evidence and impact analysis, eliminating obstacles to trade.

Assessment and recommendations

The government of Chile must pursue regulatory improvement through the adoption of a formal explicit binding and consistent whole-of-government policy instrument with identified objectives and a clear communication strategy. This strategic instrument could take the form of a law or government resolution. It should spell out the key building blocks of regulatory management and governance. The realisation of this policy should be supported through a high-level institutional body to oversee the implementation and co-ordination of regulatory improvement in Chile. It should give the lead institution a mandate to take and enforce decisions and set clear objectives. Regular reports on progress towards achieving regulatory improvement objectives should be provided to the government. Having this single comprehensive instrument would also help communicate high-level political support for the implementation of the regulatory policy agenda in Chile.

Chile, one of the most stable and successful economic performers in Latin America, lacks a comprehensive regulatory policy that could contribute to taking advantage of the benefits of economic growth and development. The absence of a "whole-of-government" approach to regulatory quality contrasts with the relatively good quality of the regulations that, according to international comparisons, Chile has achieved. The openness and liberalisation of the economy that took place several decades ago, a less interventionist approach to regulation in key economic sectors and stable and reliable institutions at the central level might explain this apparent incoherence.

Despite these positive features of the Chilean model, some challenges remain. Introducing procedures, principles, institutions and tools for high-quality regulation that combined could lead to improved policy outcomes would help boost economic activity, improve net benefits of regulatory interventions in the Chilean society and consolidate the current efforts to deal with regulation in a more organised and co-ordinated manner. It is not enough to only have the constitutive elements of a regulatory governance system, but to use them in such a way that they deliver policy outcomes. This is where Chile faces important challenges, as the current system does not ensure that regulatory interventions in the medium and long-term will be achieving the best possible outcomes.

The design of a "whole-of-government" approach should be in relation to the administrative, legal and political characteristics of the Chilean system. It might be needed to raise the status of regulatory policy to a primary law, as the current legal approach does not offer many other alternatives. It might also be required to complement this high level commitment with clear guidelines and standards integrated into current legal instruments that can then support the adequate implementation of a regulatory quality policy. But most importantly, it will require additional efforts to create and consolidate a culture of "good regulatory practices" that can really make use of more organised, transparent and co-ordinated processes and tools.

Pursuing a "whole-of-government" approach to regulatory governance might take time and could only be achieved by the gradual introduction of the constitutive elements:

- The construction of a policy with clear principles and criteria, as well as strategic goals;

- The institutional set-up required to implement it, using the existing institutions and creating the required capacities for the new tasks; and
- The selection of regulatory tools that can help achieve the main goals established in the policy.

Some elements are already in place, so it would be possible to start with co-ordinating, restructuring and upgrading some of the existing components. In order to do this, high political support is required and decisions about who should be in charge of the agenda have to be made. This should take current practices into consideration, but also thinking ahead and envisaging that the required change in the administrative culture might need strong commitment, leadership and clear decisions to define the oversight functions attached to these tasks. This is why managing expectations is essential, in order to ensure a sustainable intervention. Changes of this nature do not take place overnight and require a constant commitment, including partisan support.

The government of Chile could benefit from establishing a roadmap that could set priorities. For instance, the need to have a clear definition of regulatory policy and criteria that, later on, will be promoted across the administration seems to be one of the first steps in the process. This requires entrusting a body with the responsibilities required to implement those principles and criteria. The selection of that institution has to be based, among other issues, on defining who is better placed in the current institutional set-up of Chile in order to take those tasks in hand, who has the capacity to mobilise the regulators and where capacities could be more rapidly expanded. This should take into consideration that today several institutions have responsibilities related to regulatory management and, in some cases, some of those tasks cannot disappear, but to be reinforced and gradually concentrated in one single body responsible for this.

In addition, the selection of tools is of major importance, as this will indicate how the priorities would be achieved. Bringing more evidence to decision making should be one of those priorities, therefore the use of Regulatory Impact Analysis (RIA) seems to be essential. The simplification of regulations should also be in the top priority of actions, and current practices already provide a good starting point to engage in more comprehensive reviews of existing regulations and procedures. Improving transparency in the regulatory process, namely improving consultation mechanisms, should also be promoted as part of the first set of tools to be focused on.

Regulatory policy should be consolidated further within the framework of broader economic reforms promoted by the government of Chile. Regulatory policy should be seen as an integral part of the whole agenda to connect productivity innovation and growth strategies. Regulatory policy should help to establish regulatory frameworks clear and transparent administrative procedures and tools for better policy evaluation. Regulatory policy should primarily be a mechanism to produce better regulatory outcomes which can contribute to boosting economic activity innovation competition and social cohesion.

Chile needs to introduce targeted measures that can help upgrade its regulatory system. Integrating a regulatory policy that is able to help the government improve the selection of instruments and ensure that regulatory interventions are properly assessed and achieve policy and regulatory outcomes is crucial for the future economic development of the country.

The connection between productivity and regulatory reform has been key in some OECD countries, such as Australia, showing the evidence that improving regulatory systems has a clear impact on growth and development. The setting up of a National Productivity Commission in Chile could be used as a starting point to identify priorities and to structure a broader agenda around it, where regulatory policy should find its place. As the case of Australia shows, the model there has facilitated advising the Australian government on a range of economic, social and environmental issues that affect the welfare of Australians. The Australian Productivity Commission plays an important role in advising the government on the impacts of existing regulations by providing *ex post* analysis of the effectiveness of regulatory policies and programmes. It has an established institutional function that has been effective at separating the policy evaluation process from the political process. A number of factors contribute to this. It has statutory independence and a standing function that is accepted by all major political parties. The Productivity Commission ensures that it gives clear consideration to the government's policy objectives; it does not substitute its own policy objectives. The conduct of reviews is undertaken transparently using broad welfare analysis that takes into account a diversity of policy considerations and the impacts on the overall economy. Its review processes ensures that it receives input from multiple actors, but it provides only one voice in the policy debate without crowding out others.

The National Productivity Commission in Chile could help setting an agenda for regulatory reform and define priority areas, which could then help identify the required tools, technical capacities and institutional arrangements for implementation.

Notes

1. Article 63 of the Constitution of the Republic.
2. Article 35 of the Constitution of the Republic.
3. OECD (2002).
4. For instance, Decree 77 of the Ministry of Economy, Development and Tourism rules the procedures for preparation, adoption and implementation of technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures.
5. Law No. 19.912 that adapts legislation to the agreements with the World Trade Organisation adopted by Chile.
6. Law 20.416 establishes specific norms for SMEs
7. Regulation to dictate legal general norms that might affect SMEs.
8. www.agendaproductividad.cl
9. http://epac.mma.gob.cl/Pages/Home/index.aspx.
10. The Trans-Pacific Partnership Agreement ("TPP") is a free-trade agreement negotiated and signed in 2015 by twelve countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam.
11. The Pacific Alliance is a Latin American trade bloc composed of four countries: Chile, Colombia, Mexico and Peru.

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Chapter 3

Assessing Chile's regulatory institutions

Institutions are fundamental to ensure that regulatory policy is properly implemented. This chapter starts by stating the rationale in order to aim at establishing mechanisms and institutions to promote regulatory reform, notably through oversight of regulatory policy procedures and goals. The chapter mentions the institutional set-up for regulatory governance, and also describes institutions with clear competences to promote regulatory policy in Chile. It looks at the executive branch, independent and autonomous entities, the legislative branch, and the judiciary along the constitutional court, and its co-ordination mechanisms. Finally, and of utmost importance, it describes the organisation and governance of regulatory agencies and supervisory bodies in Chile. It finishes by issuing recommendations on how to improve the set-up of the administrative architecture in order to ensure high-quality regulations.

Institutions and mechanisms to promote regulatory reform

The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012) advises governments 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." Details of this recommendation are described in Box 3.1.

Box 3.1. **Main features of oversight bodies to promote regulatory quality**

According to the 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance*, oversight of regulatory procedures and goals should be promoted through:

- A standing body charged with regulatory oversight should be established close to the centre of government, to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance.
- The authority of the regulatory oversight body should be set forth in a mandate, such as a statute or an executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.
- The regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making. These tasks should include:
  - Quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
  - Examining the potential for regulation to be more effective including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
  - Contributing to the systematic improvement of the application of regulatory policy;
  - Co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods;
  - Providing training and guidance on impact assessment and strategies for improving regulatory performance.
- The performance of the oversight body, including its review of impact assessments should be periodically assessed.

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

Institutions are fundamental to ensure that regulatory policy is properly implemented. OECD countries have a variety of institutional set-ups for regulatory governance, which shows the need to respect administrative, legal, political and social conditions, in addition to allocating responsibilities carefully. In Chile there are institutions with clear

competences to promote regulatory policy, which will be presented in the following sections.

Executive

The 1925 Constitution in Chile introduced the presidential system as a government form in the country. A strong executive was reinforced by the current Constitution, approved in 1980 but fully effective since 1990. Chapter IV (art. 24 to 45) describes the powers and competences of the President of the Republic, including the following: preparation and promulgation of laws, enactment of decrees by delegation of the Congress in areas indicated by the Constitution and the execution of legal authority to implement laws through regulations.

The regulatory power (*potestad reglamentaria*) that the President can exert in order to implement laws by issuing decrees, regulations and instructions is relevant to understand the need to improve regulatory quality in the country. The process of exerting the regulatory power, e.g., the preparation of all regulations that complement the application of laws, does not follow detailed and strict procedures, as it is the case of the law-making procedure. This also implies that the quality of regulations, both in terms of legality and constitutionality, is ensured by different specialised institutions, but there is no formal mechanism that can review the pertinence, relevance and coherence between regulations and laws. Thus, some regulations that are legally valid, but do not correspond to what the law intended, may be found in the Chilean legal background.

Some key institutions in Chile play a relevant role in regulatory functions. Among them the following:

- *President of the Republic*. The presidential system makes the Chilean executive a strong actor in the law-making process. As in many other presidential countries, the executive is the main producer of law proposals debated in Congress. According to the Constitution, the President of the Republic can use the law initiative through a message (*mensaje*) and the Deputies and Senators can submit a motion (*moción*).[1] Both messages and motions have to be submitted in writing with an explanation of the reasons and a clarification of the various articles contained in the law. Furthermore, messages should include the source and the amount of financial resources needed, in the event that expenditures arising from the law are implied in the national budget.[2] The President is also responsible for nominating Presidential Commissions that are established for fixed periods of time to address issues of relevance for the country that might lead to legal amendments or new interventions.
- *Ministries*. Ministries are the superior institutions that collaborate with the President of the Republic in the administration and functioning of policy sectors. They are responsible for:[3] *i)* proposing and assessing public policies and programmes; *ii)* assessing and proposing regulations that are required for the functioning of their sectors; *iii)* ensuring compliance and enforcement of regulations in their sectors; *iv)* allocating resources and implementing the required activities in their sectors. Some ministries have introduced good regulatory practices. For instance, the Ministry of Transport has established a Regulatory Committee, headed by the minister and composed of heads of division, which sets priorities on what could be regulated, after a technical analysis and strategic views.

Some of the ministries most relevant to regulatory policies and quality control mechanisms are the following:

- *Ministry General-Secretariat of the Presidency*. The Ministry[4] is responsible for the legal and technical review of Supreme Decrees, as well as their coherence. It participates in the preparation of the legal agenda of the government and the review and analysis of draft proposals, making suggestions on the legal options to the President of the Republic, in consultation with the Ministry of Interior. The Legal Division is however not empowered to answer questions.
  - *Legal Division (División Jurídico-Legislativa).* Art. 9 of Law 18.993 establishes the functions of the Legal Division. The most relevant are to provide legal advice to the President of the Republic, the Ministry of Interior and other ministries; to participate in study commissions of law draft proposals at ministerial level; to analyse and submit draft law proposals to the National Congress that originated within ministries or any person in the executive; to propose the degree of urgency of draft law proposals in the government legislative agenda ; to follow up the draft law proposals in congress, informing ministries about possible amendments and their implementation; to prepare weekly reports on the status of the processing of draft law proposals, the possible urgency given by the President to some draft law proposals and any additional information; to be the link to the Constitutional Court in terms of processing draft law proposals, and to draw up executive decrees for laws.
  - *Inter-ministerial Co-ordination Division* (*División de Coordinación Interministerial*). Art. 10 of Law 18.993 establishes the functions of the Inter-Ministerial Co-ordination Division. The most relevant are those intended to co-ordinate the preparation of the report on ministerial goals in collaboration with the Ministry of Finance; to identify the co-ordination needs arising from the ministerial goals; to analyse and assess compliance with government plans and programmes; to assess the political and programming coherence of draft law proposals being analysed by the Legal Division; to analyse the consistency of the programmes by the intersectoral Commissions and Working Groups set up.
  - *Modernisation of the State Unit and E-Government (Unidad de Modernización del Estado y Gobierno Digital)*. This Unit is responsible for the implementation of ICT solutions and introducing digital government tools in order to improve the services and support that public institutions provide to Chilean citizens. They are in charge of administrative simplification projects and platforms to provide citizens with information and administrative transactions. The key objectives of this Unit are to increase the technological capacities of the State and the municipalities, and also to provide a more transparent and participative environment to meet citizens´ needs and to improve their lives.
- *Ministry of Finance*. This Ministry is the cabinet-level administrative office in charge of financial affairs, fiscal policy and capital markets in Chile. It provides support in planning, directing, co-ordinating, executing, controlling and informing all financial policies formulated by the President.

  - *Directorate of Budget* (*Dirección de Presupuesto*, DIPRES) has the responsibility, among others, to inform about the available funding of decrees before they are signed and ratified by the Minister of Finance, in order to ensure the control and execution of the national budget.[5] It performs *ex ante* programme evaluations. It also contributes to evaluating the allocation and use of financial resources in different government programmes, projects and institutions, through *ex post* evaluations.

- *Ministry of Economy, Development and Tourism*. It is responsible for promoting the competitiveness and modernisation of the productive structure in the country, private initiative and an efficient functioning of the markets, in addition to innovation and the international integration of Chile into the world economy. Two of their divisions are of relevance in this review:
  - *SMEs Division.* It is responsible for formulating and implementing policies and measures to support SMEs, focusing on increasing productivity so they can innovate, grow and internationalise. The main actions to support SMEs are: to improve financial conditions for SMEs, to help and provide assistance to SMEs to improve their managerial functions and to increase market opportunities for SMEs. This implies taking regulatory actions to support SMEs.
  - *Business Registration Division*. It is in charge of managing the registry of companies and businesses in Chile and it implements the one-day start-up policy (Your business in one day, *Tu empresa en un día*).
- *Superintendencias*. Superintendencies are institutions with a high degree of autonomy, as they are considered deconcentrated bodies.[6] In most cases, Superintendencies are responsible for controlling and supervising the legal framework of specific activities in their sphere of competence, such as pensions, banking, environment, etc. Superintendencies relate to the central government through ministries. They have their own legal statute and entity.
- *Productivity Commission* (*Comisión Nacional de Productividad*). Established in 2015 the Productivity Commission is a permanent body that will advise the government on productivity issues. Among its responsibilities, the Productivity Commission will identify constraints and obstacles related to regulations that hinder economic activity in a given sector or reduce the possibilities of economic development and growth of businesses. It will propose solutions to the national government after conducting analysis and research. The members (*consejeros*) of the Commission are mostly from academia and professionals related to economic activities from different backgrounds. They will have the political independence to provide analytical advice to the government and are supported by a Technical Secretariat to conduct the analysis and research.

Independent and autonomous entities

- *Comptroller General of the Republic*. This institution is responsible for providing information on the constitutionality and legality of the supreme decrees and the resolutions of heads of service that have to be processed by the Comptroller General.[7]

- *Council for Transparency*. An autonomous body that is responsible for promoting the transparency culture in the Chilean administration, ensuring that the right of access to public information is guaranteed for people. It promotes and creates capacities in terms of transparency, but also imposes sanctions on government officials who refuse to release public information.

Legislative

Even though regulatory evaluation is not a standardised and systematic practice in the executive branch, the legislative could articulate its own efforts with those of the administration. While it is true that not many parliamentary institutions in OECD countries have formally adopted regulatory quality tools, there are some good practices of regulatory evaluation, for instance, in the Swiss Federal Assembly and the Swedish Parliament (*Riksdag*) (see Box 3.2).

Box 3.2. **The legislative's role in promoting regulatory quality: Switzerland and Sweden**

The governmental system of **Switzerland** gives high priority to the evaluation of laws and federal government activities. Evaluation is undertaken by the Parliamentary Control of the Administration (PCA), which is part of the Parliamentary Services Department of the Federal Assembly. Established in 1991, the PCA is an example of a specialised service that carries out evaluations on behalf of Parliament. Evaluations are presented to Control Committees, which are mandated by the Federal Assembly to exercise parliamentary oversight of the activities of the Federal Government and the Federal Administration, the Federal Courts and the other bodies entrusted with tasks of the Confederation.

In the **Swedish Parliament** (*Sveriges Riksdag*) the Parliamentary Evaluation and Research Unit is in charge of *ex post* evaluation and co-ordination. The Unit was established in 2002 and was placed under the *Riksdag* Research Service. The Unit is headed by the Committee co-ordinator of the *Riksdag* Administration and works closely to support parliamentary oversight committees in their evaluation functions and undertakes, among others, the following tasks:

- Helping the committees prepare, implement and conclude follow-up and evaluation projects, research projects, and technology assessments.
- Locating and appointing researchers and external experts to carry out projects.
- Preparing background materials for evaluation and research projects at the request of committees.
- Requesting up-to-date reports from government agencies on the operation and effects of laws.
- Contributing to the structuring, implementation and final quality control of projects.
- Contributing to the general development of the committees' evaluation and research activities.

The *Riksdag* has twice (2001 and 2006) incorporated guidelines for follow-up and evaluation as one main task to be undertaken by committees. The guidelines state that the *Riksdag* must obtain information to assess if the laws adopted have had the intended effects, as well as other forms of follow up and evaluation, such as whether resources have been distributed in accordance with political priorities.

Source: OECD (2006), *OECD Reviews of Regulatory Reform: Switzerland 2006: Seizing the Opportunities for Growth*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264022485-en; and OECD (2010), *Better Regulation in Europe: Sweden*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264087828-en.

The Chilean Chamber of Deputies deserves particular mention for its efforts to improve the quality of regulations through *ex post* analysis of laws. The analysis and assessment of this institution is considered in chapter 7.

The legislative branch in Chile is composed of a bicameral National Congress, located in Valparaíso, comprising the Senate, with 38 Senators, and the Chamber of Deputies with 120 members of parliament (MPs). The main function of the Chamber of Deputies is to participate in the preparation of laws, together with the Senate and the President of the Republic.

The law-making process in Chile can be described as "co-legislation", as both the executive and the legislative play a relevant role. Both powers can submit law proposals and participate in discussions. The President is responsible for the promulgation of laws, once they have been approved by the legislative and is in charge of their publication. The Chamber of Deputies of the National Congress supervises the executive acts, and it can be vocal in government decisions, in the case where laws are not implemented in accordance with their original spirit.

Judiciary

The role of the judiciary in terms of regulatory quality is also relevant in Chile. Judicial review of regulations is part of the principle of jurisdictional control that can be exerted in different ways. In addition to the Constitutional Court (see chapter 3), protection and economic appeals may be lodged (*recursos de protección* and *amparos económicos*), details of which are given in section *appeal process for regulatory decisions* in chapter 6, to control regulatory interventions by central administrative institutions or at local authority level, such as municipalities (in this case complaints of illegality or "*reclamos de ilegalidad*").

The judiciary is described in Chapter VI of the Constitution of Chile. The most relevant institutions in the judiciary branch are:

- *Supreme Court*. The Supreme Court of Justice is the head of the Chilean judiciary system. It is made up of 21 members called "Ministers" (*Ministros*), designated by the President of the Republic, who selects them from among five candidates proposed by the Supreme Court, with the agreement of the Senate. Of the 21 members of the Supreme Court, 16 must be Appeal Court judges and 5 must be lawyers with no connection to the judiciary system and with a distinguished professional or academic career and several other requirements laid down by law. The Supreme Court of Justice is responsible for the management, correctional and economic superintendence of all the courts in the country, except the Constitutional Court, the National Board of Elections and the Regional Boards of Elections.
- One of the most important functions of the Supreme Court is to act as a Court of Cassation, ensuring that the law is applied in the same way to all similar cases, so as to maintain a uniform interpretation of the law throughout the country.
- *Courts of Appeal*. In terms of administrative regulation, jurisdictional control is guaranteed in several articles of the Constitution,[8] which establish the right to effective judicial protection. The Ordinary Courts of Justice are responsible for administrative and contentious matters, e.g., the judicial review of regulations by means of annulment or compensation.

- The Courts of Appeal acknowledge the right to lodge appeal or protective actions. There are seventeen Courts of Appeal in Chile. They have jurisdiction in almost all second-level courts, as well as ruling on proceedings in lower courts on other matters.
- *Special Courts*. There are certain special procedures where controversies and proceedings on administrative and contentious matters are held in special courts or tribunals, such as the Public Procurement Court, or issues related to electricity or municipal decisions. In areas where decisions are extremely technical, Chile has also moved forward in creating special courts, such as the Tax and Customs Courts, created by Law No. 20.322 of 2009, or Environmental Courts, established by Law No. 20.600 of 2012.

Constitutional Court

The Constitutional Court is not part of the judiciary, since it was set up as a body independent of any other branch of power. According to the Constitution of Chile,[9] the Constitutional Court is composed of ten members: three designated by the President of the Republic; four elected by the National Congress (two elected directly by the Senate; two elected at the proposal of the Chamber of Deputies subject to approval or rejection by the Senate, always with a two-thirds majority); three elected by the Supreme Court by secret ballot. All members must be lawyers with at least fifteen years of professional experience, with a distinguished professional or academic career and other requirements established by the Constitution.

The Constitutional Court is responsible for issuing various types of reviews on regulatory interventions:

- *Preventive control*. It can exert an *ex ante* review during the preparation of a law, that may be compulsory or optional, undertaken during the law-making process, a constitutional review or approval of treaties by Congress. This control is compulsory when the matter refers to laws interpreting the Constitution, constitutional organic laws and regulations related to those constitutional organic laws.
- *Repressive control*. It can also exert an *ex post* review of the constitutionality of existing laws that can be made using two different mechanisms. The first one refers to the action of non-applicability due to unconstitutionality, in the case of matters that were referred to the Constitutional Court by any of the affected parties or a judge. The second one is the action of unconstitutionality, by which a legal precept can be declared unconstitutional, by a vote of four-fifths of its members, as it was previously declared inapplicable.

The Constitutional Court is also competent on issues related to the constitutionality of Decrees with the force of law, decrees or resolutions presented by the President and rejected by the Comptroller General of the Republic or supreme decrees. In any of these cases, an appeal cannot be made against the unconstitutionality declared by the Constitutional Court and, consequently, the norm cannot come into force.

Co-ordination mechanisms

Co-ordination is essential to ensure regulatory quality in any country. In Chile, there are no formal co-ordination mechanisms between regulatory institutions, even if Law No. 18.575 that establishes the Constitutional Organic Act for the Administration of the

State points out that the institutions that are part of the State administration should observe, among others, the principles of responsibility, efficiency, effectiveness, co-ordination and transparency in their activities to meet their objectives and goals. Despite this requirement, co-ordination during the regulatory process is uneven. With a separation of functions, between ministries and superintendencies, co-ordination should be promoted and ensured, but this is not always the case. Superintendencies are not systematically invited to participate in the design of likely regulatory interventions as early as possible, although they might be required to do so in specific cases and sometimes they provide information to guide the regulatory decision to be made.

Co-ordination can also be ensured through institutions signing agreements with each other. This is not a general practice, but an informal way to agree on certain matters and ensure that issues are discussed, and potential conflicts are solved in an orderly way.

Co-ordination is also achieved, when it is about complex issues that require consensus and agreement, through the set-up of Presidential Commissions that have an advisory role on matters that might require legal amendments or new approaches to intervene. These Commissions do not have a clear structure, but they are composed of recognised specialists who might help in guiding the discussions on the topics they deal with and make recommendations after they have been established.

Organisation and governance of regulatory agencies and supervisory bodies

In most OECD countries, economic structural reforms have prompted the establishment of independent regulatory agencies and the revision of existing regulations. The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012) advises governments to "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."

The organisation and governance of regulatory institutions in Chile is regulated mainly in two legal instruments: Law No. 19.882, which frames the civil service policy and the assignment of high-level managerial appointments, as well as Law No. 18.575 that establishes the Constitutional Organic Act for the Administration of the State, such as appointment of management, responsibilities, human resources policies and dismissal criteria. The different stages of the decision-making process are also clearly established.

Regulatory institutions are in general linked to and dependent on the central government. Regulators can be centralised, decentralised, legally autonomous or constitutionally autonomous, depending on the degree of autonomy from the executive power. There are no independent regulators in Chile, as understood in other OECD countries (see Box 3.3).

The governance arrangements of regulatory bodies, however, are not uniform in the Chilean administration, as each institution might present specific characteristics and the general guidance refers only to broad policy objectives and human resources administration. The potential lack of independence of regulatory bodies is more acute in some sectors, such as banking, where ministerial institutions or even superintendencies that have some regulatory roles cannot have the degree of independence that might be required to take certain decisions.

Box 3.3. **The development of independent regulatory agencies**

The powers held by independent regulatory agencies distinguish them from mere "administrative agencies" set up for managing part of the state administrations. Their powers allow authorities to issue opinions, set rules, monitor and inspect, enforce regulations, grant licenses and permits, set prices and settle disputes. Institutional arrangements, including the legal framework and the provisions for governance, as well as a given administrative and political practice are a necessary condition for the independence of regulators. Independence needs to be balanced with accountability. Accountability for regulatory authorities, which are at arms' length from political decision-makers is often obtained through a set of procedural means, including annual reports, transparency in decision-making, self and external evaluation.

Regulatory authorities in OECD countries are often established in key economic sectors, with a role to foster competition and also provide for technical or prudential oversight. The goal is also to minimise the potential for conflicts of interests and stimulate long-term investment in key infrastructure sectors as well as strengthen confidence and reduce institutional risk. The design and management of such regulatory agencies present significant challenges. Key issues in this respect include considerations on how to establish institutions that are:

- Competent, accountable and independent;
- At arm's length from short-term political interference;
- Capable of resisting capture by interest groups, but still responsive to general political priorities;
- Able to exercise delegated powers, including for example the power of granting licenses or imposing sanctions in specific cases;
- Capable of having decision-making procedures that take into account the particularities of the area being regulated, while at the same time maintaining transparency and accessibility for all stakeholders; and,
- Ensuring transparency and accessibility for all stakeholders.

Source: Córdova-Novion, C. and D. Hanlon (2003), "Regulatory governance: Improving the institutional basis for sectoral regulators", *OECD Journal on Budgeting*, Vol. 2/3, http://dx.doi.org/10.1787/budget-v2-art16-en.

Regulatory bodies are financed according to the Law on the budget of the public sector that is approved yearly. The general legal framework on the organic financial administration of the State lies in Law Decree No. 1263. There are additional financing sources for some sectoral regulatory institutions, such as international co-operation or tariffs imposed by inspections.

There are some exceptions to the general way of finance allocation. For instance, the Superintendence of Banking, according to the General Law on Banks, is financed through the resources obtained from the regulated entities, which are deposited in the Bank of the State and the Superintendency can make use of them. The Expert Panel on electricity issues is responsible for solving discrepancies between the regulator and generation, transmission and distribution companies, and its maintenance costs are covered by the companies in the electricity sector, according to the General Law on Electricity Services.

In the Chilean legal framework overlaps may be found between the powers and responsibilities of regulatory bodies. In the absence of formal mechanisms to solve this issue, the solution is sometimes the abstention to act or address those potential conflicts, which reduces the effectiveness of regulatory interventions.

In terms of implementation of regulatory interventions, there are some institutions exclusively dedicated to the supervisory role, the superintendencies (*superintendencias*), as is the case in other Latin American countries, such as Colombia and Ecuador. They mainly operate in three sectors: concessioned public sectors, social security and financial markets. However, the separation between the regulator and the implementer does not apply to all sectors and there are no clear rules on which cases this rule should apply to or not. It depends on the economic sector and the existing institutions and particular competences they have been assigned to.

Ministries are generally the ones that oversee the adequate functioning of the various institutions that are in charge of sectoral regulatory policy, either in their regulatory (regulator) or in their supervisory role (superintendency). In some sectors, the law clearly states who is responsible for what. For instance, in the energy and electricity sector, the Ministry of Energy (sectoral policy), the National Commission of Energy (regulator for tariffs and technical regulations for the operation of energy installations) and the Superintendency of Electricity and Fuels (supervisor) share the various roles in the sector.

Effectiveness of regulatory institutions is only monitored by compliance with internal management goals and targets established by the institution itself. There is no institution responsible for ensuring that those goals are met, but the Council of the Internal General Audit of the Government plays a preventive and monitoring role to support the President´s Office in assessing governance systems, risk management, compliance and internal control of the public administration entities.

Accountability of regulatory institutions is set in political and administrative terms. The executive power has to present to the legislative power an annual report on goals met and needs, as established by the Political Constitution of the Republic. The Comptroller General is also making institutions accountable, as it exerts the legality and budget control of bodies of the State administration. In addition, the Transparency Law has contributed to increasing accountability as regulatory institutions are obliged to publish their financial activities and according to Law No. 19.886, which deals with public procurement, also obliges regulators to make their tenders public.

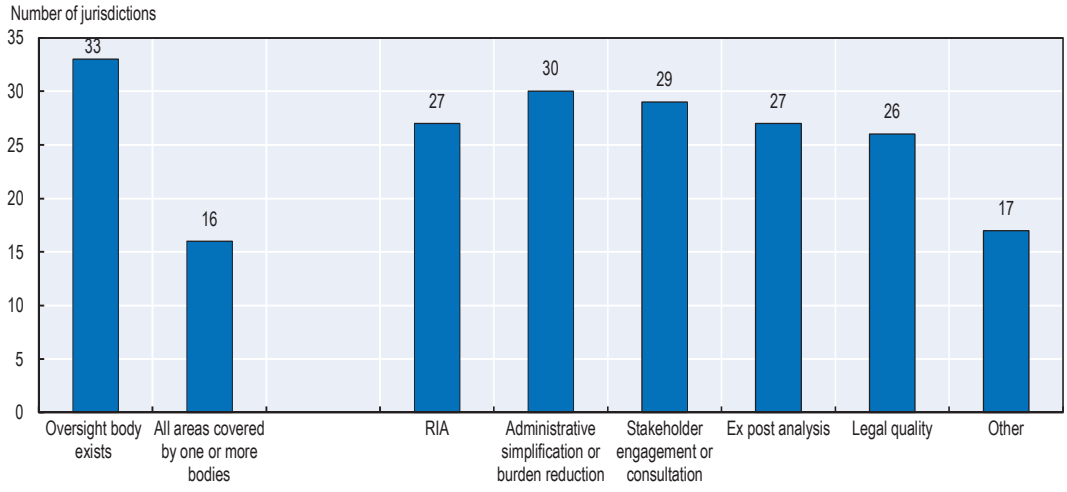
Some regulators have also started to make the results of their activities public, even if there are no performance indicators related to specific targets and the effectiveness of their regulatory intervention. In some cases, however, regulators are publishing the use of financial resources in their activities, analysis of their policies and programmes, and some quality indicators that are used to monitor their activities.

Assessment and recommendations

The government of Chile must set up an oversight body in charge of regulatory policy located at the centre of the government. This unit could build on the existing work of the Legal Division and the Interministerial Co-ordination Divisions within SEGPRES. The unit should ensure a co-ordinated and consistent approach to the design and implementation of laws and regulations across the jurisdictional space of Chile. It should provide support to all government ministries through training and methodologies including on regulatory management tools such as regulatory impact assessment administrative burden measurement and reduction. This unit would require dedicated staff to carry out its mandate. Staff background should include expertise in law economics social sciences and public management.

One of the main weaknesses of Chile's institutional set-up for regulatory reform is the lack of a regulatory oversight body. International experience shows that regulatory reform must be led by a dedicated institution, located at the centre of government, with clear responsibilities. An oversight body for regulatory quality is essential to ensure that regulatory policy is promoted and implemented with a whole-of-government approach. The governance challenge, the ability of the oversight body to co-ordinate the government-wide implementation of regulatory policy effectively, should be one of the main considerations in deciding which institution could play this role. Thirty-two OECD countries report having constituted some form of regulatory oversight body performing different functions (see Figure 3.1).[10]

Figure 3.1. **Areas of responsibility of oversight bodies**



Note: Based on data from 34 countries and the European Commission.

Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

In considering various options for the institutional model to be adopted, the government of Chile should take a number of issues into account. First, the fact that several institutions already perform some of those functions, but without a clear mandate and capacities to be in charge of promoting regulatory quality. For instance, SEGPRES

benefits from its position at the centre of the government and its co-ordination role, DIPRES is in a powerful ministry and has high-technical expertise, and the Ministry of Economy, Development and Tourism has a constituency related to entrepreneurship that would naturally be part of an agenda for regulatory reform. But promoting regulatory quality within the State administration requires more than just a clear mandate. It is a matter of having political engagement and commitment, as well as a clear capacity to mobilise various institutions and stakeholders in a common strategy.

Second, there is a need in Chile to set up such an institution in a legal, administrative and political context in which substantial political support is required to ensure that institutions of the State administration with regulatory and supervisory powers engage in the promotion of better regulation practices and the use of various regulatory tools to improve performance. In presidential systems, the support and engagement of the executive has been essential to introduce, implement and sustain regulatory reform. Institutional arrangements using a top-down approach and a strong quality control mechanism, such as in the case of Mexico and the United States, have proven successful OECD experiences. In Chile, the introduction of new practices, procedures and tools should be accompanied by the firm commitment to achieve a cultural change in the medium and long term, which requires strong political support to the regulatory reform agenda in a sustained way.

Third, an oversight body needs to have clear responsibilities and lead an agenda of regulatory reform at the central level. Any arrangement would require allocating responsibilities to perform the main functions: co-ordination, advocacy, challenge and facilitation, which include the following tasks:

- *Co-ordination*. A regulatory oversight body has to co-ordinate the efforts for regulatory reform within the whole administration. It should be responsible for setting the standards by which regulators should operate, based on an agreed agenda for regulatory quality. It should also help avoid duplication of functions and responsibilities and ensure that co-ordination mechanisms are in place for regulators to achieve regulatory coherence.
- *Advocacy*. The oversight body has to promote regulatory reform as a continuous process to ensure the improvement of the regulation, and that the required standards are met by regulators. It should engage in disseminating good practices within the administration. It has to reach out to stakeholders outside the administration to have champions of reform also outside the administration.
- *Challenge*. The oversight body has to challenge the quality of regulations through the use of impact analysis. This means that once an institution has prepared an impact assessment, the oversight body should be able to receive it and make comments and suggestions on the quality of the analysis and the process by which the regulator produced it. A strong oversight body might have the power to reject an impact assessment that does not comply with the agreed standards and request the regulator to revise it; and,
- *Facilitation*. The oversight body has to facilitate regulatory reform initiatives among regulators through training, raising awareness and capacity building activities. The main task is to achieve a cultural change within the administration.

Those functions need to be gradually introduced, as they are not present at the moment, and expanded only when the system has been able to absorb them and implement them in a proper way. In the current context, SEGPRES seems to be in a

position to lead the regulatory reform efforts, as it is the natural co-ordinator of government policies, for coherence in government interventions and for the modernisation of the public administration. However, in order to perform this role, the stated capacities for regulatory reform should be created. Support from other institutions, such as the Ministry of Finance and the Ministry of Economy, Development and Tourism could be envisaged, as they already play functions related to regulatory reform.

Some current responsibilities and practices could be the starting point for this process. For instance, SEGPRES already conducts the legal review of main draft laws and regulations (only *reglamentos*) prepared by the executive, ensuring regulatory coherence and legality. Consolidating the legal review could be an initial step, in which clear standards, guidelines and tools are designed and introduced, improving the criteria against to which regulation is assessed. Then regulatory reform, and in particular the use of tools, such as Regulatory Impact Analysis (RIA), requires including the economic assessment of regulation, i.e. to understand if there is sound evidence that benefits outweigh costs in regulatory intervention. This capacity and approach is clearly missing at the centre of the government at present. Therefore, additional capacities are needed to take this responsibility forward. The current *ex ante* assessment efforts have to be promoted, but also upgraded to the level of making the use of RIA compulsory for the whole administration.

In addition, SEGPRES co-ordinates efforts on digital government and simplification of procedures and formalities within the State administration, while the Ministry of Economy, Development and Tourism is responsible for this topic in relation to businesses. Upgrading these policies to a comprehensive programme of administrative simplification is necessary to ensure the promotion of regulatory quality across the administration. Among the various tasks that are required to put in place a simplification programme are: reviews of the current stock of regulation, identification of more cumbersome regulations and procedures, measurement of administrative costs imposed by regulations to businesses and citizens, broader legal simplification and the use of ICT to support the simplification programme take place.

Thus, the governance challenge, the ability of the oversight body to co-ordinate the government-wide implementation of regulatory policy effectively, should be one of the main considerations in deciding which institution could play this role. The current Chilean system needs to carefully allocate clear responsibilities and introduce the legal changes and incentives that are needed to ensure that regulators start changing their regulatory practices.

An advisory body at the highest political level could help the government of Chile to promote and advocate regulatory reform. This body should involve key ministers and/or deputy ministers and a wide range of stakeholders to identify and agree on key priorities discuss progress and take any corrective actions that are needed to advance implementation of key regulatory reforms. The Ministry of Economy, Development and Tourism for example could be the Secretariat for such a platform and it could work closely with the advocacy body to ensure that legal and regulatory amendments are proposed after sound analysis of the regulatory constraints faced by the business community.

Regulatory quality is a constant process that requires advocacy and promotion at the highest levels of government. Many OECD countries have relied on advisory bodies for

regulatory reform to shape a national agenda for regulatory quality. Such institutions have contributed to putting the topic of regulatory governance and reform on the political agenda and engaging with stakeholders that otherwise would not have the appropriate channels to express their views and support for the reform process. Multi-disciplinary teams are important in these types of advisory bodies, particularly when countries are at the initial stages of the reform process and need to have a broader picture of where the key priorities lie.

Chile has a tradition of establishing presidential commissions to deal with specific topics that are of national interest and that normally provide feedback and evidence on the way forward for reforms. They help the government in the implementation of reform agendas and they contribute to legitimising and providing transparency to that process. The possibility of establishing such a commission, or a similar mechanism, to support shaping the regulatory reform agenda would be an adequate step to engage with different stakeholders and identify high-level experts that could contribute to the design and implementation of such an agenda for regulatory reform.

In particular, such an advisory body could help identify the main constraints in regulatory sectors. For instance, such a mechanism could have representation of various stakeholders, such as private sector members, who could help identify key regulatory bottlenecks that should be tackled to make markets more competitive and efficient. The Ministry of Economy, Development and Tourism, for example, could be the Secretariat for such a platform, and it could closely work with it to ensure that legal and regulatory amendments are proposed after sound analysis of the regulatory constraints faced by the business community.

It would be important to give this mechanism a permanent role instead of a limited life. This will ensure continuity in its work and give it a long-term perspective, which is essential for engaging in the medium and long-term reform process. It should also have the support of a technical secretariat that could provide analytical inputs to its work, helping members of the mechanism to adequately identify the key areas in which the government should concentrate their efforts for further improvements.

The government of Chile needs to create institutional capacities for regulatory reform. The oversight body should be tasked with the preparation of key guiding documents such as manuals checklists brochures etc. to help regulators to get acquainted with the use of regulatory management tools and procedures. Workshops courses seminars and training will also be important mechanisms to learn and share experiences among regulators. The long-term aim would be to create small dedicated units within policy-making institutions charged with the promotion of regulatory quality.

Capacities are essential for regulatory reform. Any programme whose intention is to improve the quality of regulation needs to build internal and external capacities to manage the process and make sure the implementation of the selected tools is successful and sustainable over time. As Chile is starting the discussion, it will be important to carefully define the best ways to create capacities in this field.

Any regulatory reform programme has to be supported by the development of capacities among regulators. Chile has a well-structured public administration with high technical capacities in several policy fields. Some regulatory bodies are recognised by

their expertise. Workshops, courses, seminars and training are important mechanisms to learn and to share experiences among regulators. The preparation of key guiding documents, such as manuals, checklists, brochures, etc. is another way of exchanging information and helping regulators to get acquainted with the use of tools and procedures. The oversight body has to be given the task of training and guidance in the use of regulatory tools and strategies for improving regulatory performance, in addition to creating its own capacities to play that role.

Capacities can also be built within the administration by engaging with the regulators. Some countries, like the United Kingdom, have created dedicated units within the institutions exclusively responsible for the promotion of regulatory quality and the use of specific tools. This has led to establishing a network of experts that disseminate good regulatory practices and help committing to the use of tools in a systematic way. Expanding the regulatory culture of pursuing good practices within the administration is essential to sustain reform in the future.

Institutional capacity has to be created as well with external stakeholders, such as the private sector, consumer associations, academia, etc., making with stakeholders and adopting a culture that promotes good regulatory practices is also important to support the regulatory reform agenda of the government. Stakeholders have to be key players in the use of regulatory tools, such as public consultation, RIA or simplification of administrative procedures.

Regulatory institutions in Chile need more accountable and autonomous governance arrangements in order to enforce regulatory portfolios ensure efficiency and deliver better regulatory outcomes. Chile might benefit from reviewing the governance structure of its regulatory institutions in order to make them more accountable and protect them from major political changes or government interference.

Efficient and effective regulators, with good regulatory management and governance practices, are needed to administer and enforce regulations. OECD countries have found (OECD, 2014) that there is scope to enhance governance of regulators as part of broader initiatives to improve regulatory outcomes. Appropriate governance arrangements for regulators to support improvements in regulatory practice over time, and strengthen the legitimacy of regulation. The diversity of regulatory agencies in OECD countries and around the world corresponds greatly to legal, administrative, political and economic conditions in each country. The current institutional framework in Chile does not offer the possibility for them to act at arm´s length from ministerial and executive power, as happens in other OECD countries. In Chile, as in other Latin American countries, such as Colombia, regulatory bodies are characterised by strong ministerial power within the presidential administration. Governance arrangements of regulatory bodies respond to that logic and the way in which autonomy, accountability and transparency are structured should be understood within that institutional perspective.

Several issues related to the governance of regulatory bodies could be questioned and more evidence is required to reach conclusions in that sense. For instance, even if most of the heads of such institutions are selected through a competitive selection process in Chile, the President nominates and removes them. This clearly indicates dependence on the executive power, even if the degree of autonomy given might help to prevent strong political interference. However, this situation does not allow for taking forward some

principles, as the line between policy design, regulatory decision and sanctions capacity is sometimes not clearly established.

Chile might benefit from reviewing the governance structure of the regulatory institutions, in order to make institutions more accountable and protect them from major political changes or government interference. The "deconcentration" given to regulators could benefit from more "autonomy" and even "independence", particularly in sectors where the State has interests and regulators also have to promote a fair and level playing field. Greater autonomy could be considered in cases where the institutions need to be autonomous or independent to maintain public confidence, and particularly when their decisions have significant impacts on regulated parties and there is a need to protect the agency´s impartiality.

In addition, it would be important to strengthen their governance structure by improving the way they are headed. In many OECD countries, regulatory institutions are not led by only one director or president, but by a board of directors that could ensure impartiality and have staggered terms of office, which do not always coincide with the presidential one, thereby strengthening their independence by separating the term of office of regulators from the term of office of government. The process of selecting and appointing the various members of the board is not only a task for the executive, but the legislative might also be involved, as the Parliament or Senate participates in the selection and nomination process. In order to minimise the political interference of executive or ministerial oversight, members of regulators have to comply with strict and clear guidelines and policies of conflict of interests.[11]

Accountability could also be strengthened by the inclusion of good regulatory practices and the use of regulatory tools that would contribute to improve consultation processes, transparency in decision-making, and the way they communicate with the public. The absence of such a regulatory quality policy negatively impacts on decision-making processes, reducing the possibility of making interventions more efficient and outcome-oriented. Regulatory institutions and superintendencies, being part of the same regulatory system, should be encouraged to actively participate in the promotion of principles for regulatory quality.

Superintendencies should be granted more autonomy to better enforce regulations. Governance arrangements of superintendencies could be improved by ensuring that independence from ministerial intervention is preserved while at the same time putting in place greater accountability disciplines. The OECD Best Practice Principles on the Governance of Regulators can provide important guidance in this regard.

Superintendencies in Chile play an important role in the implementation and preparation of regulation. They are considered highly specialised bodies that have good human and financial resources to undertake their tasks, which relate to regulated economic sectors and deliver social services. In most cases, superintendencies have a mandate to enforce and ensure compliance with regulation, which is established in laws that created them. They conduct these tasks mainly through sanction powers. In other cases, they also have some regulatory functions, which are shared with the corresponding ministry that heads the sector in which they operate. These regulatory functions are not always precise and in some cases the regulatory responsibilities cover innumerable matters that might overlap with other institutions or expand to powers that are not described in a detailed manner in their creation law.

Superintendencies have autonomy and legal personality, but they are linked to the ministry heading the economic sector in which they act, which reduces their autonomy (not to mention that they are not fully independent). They are considered "deconcentrated administrative bodies" (*órganos administrativos desconcentrados*) and therefore they are subject to constitutional precepts, such as legality, respect of fundamental rights, separation of powers, etc. They are not subject to the "*toma de razón*" made by the Comptroller General, by which their legal acts should be subject to scrutiny in their legality, since they publish resolutions or circulars that are considered general compulsory norms. These types of norms, however, can be appealed in courts of justice.

Superintendencies have the prerogative to construe the law, which grants them broad interpretation powers on how to apply the sectoral law that rules their economic sector or service delivered. This, in the particular case of ensuring compliance with the law, gives them extensive inspection powers that, on several occasions, have been appealed by regulated entities. Even if several court decisions have found inspection powers of superintendencies lawful and constitutional, their powers and the way they are used could be seen as excessive and unfair, posing questions on the constitutionality of their activities.

Governance arrangements of superintendencies could be improved by granting them greater autonomy and ensuring that independence from ministerial intervention is preserved. Some of the possible changes that could be promoted are the following. First, instead of having a single head of the institution (*superintendente*), a board could be established to break the direct link with ministerial guidance and dependency. Second, specific procedures should be launched to nominate and dismiss board members. Third, the selection of superintendents should be part of a transparent process, in which other institutions, such as the legislative, can participate, supporting and approving presidential nominations. Fourth, appointments of superintendents could be staggered, so there is no political dependence on the executive, periods of terms do not coincide with the presidential term and there is continuity of the implementation of regulatory delivery.

In addition, superintendencies need to be more transparent both in their procedures and in their outcomes. More information for regulated entities on how decisions are made, on what sanctions are applied and against which criteria, results of their supervisory role, information on how they conduct administrative procedures, and public consultation procedures when it comes to introduce regulation, etc. is necessary to gain trust and confidence among regulated entities. It is also essential to move from a sanction attitude to a more educational one that could reduce costs to the society and businesses in terms of compliance.

Co-ordination mechanisms between regulatory institutions have to be strengthened to improve all stages of the regulatory process. Given the centralised nature of the Chilean administration greater resources need to be applied to make ministries work together and ensure that regulatory decisions are properly discussed and enforced. Early and organised participation of superintendencies in the regulatory process particularly in the sectors where they play the exclusive role of supervision and control is essential to improve the quality of regulations. For the regulatory system as a whole inter-ministerial co-ordination would require the introduction of some incentives and sanctions.

Chile has a separation of functions between institutions participating in the regulatory process, which are not as clearly established as in other countries, such as Colombia. Generally, ministries and other types of bodies, such as commissions, are responsible for policy and regulatory formulation, while superintendencies are in charge of supervision and control of such regulation. This is not the case in every single regulated sector, as mentioned already, but in some areas the institutional set-up considers the existence of different actors responsible for specific parts of the regulatory process.

This separation of functions requires intensive co-ordination mechanisms and good communication channels between all institutions. Institutions need to talk to each other when it comes to designing, applying and monitoring regulation, as otherwise the information flow could be severely reduced and limited. Inter-ministerial co-ordination seems to be a serious constraint in Chile from the design to the implementation of regulation, as different institutional actors have to be engaged in the process without the existing formal procedures that can ensure enough discussions take place at the early stages of the regulatory process. Given the centralised nature of the Chilean administration, greater resources need to be applied to make ministries work together and ensure that regulatory decisions are properly discussed and enforced. Some OECD countries have specific institutional arrangements that support inter-ministerial co-ordination, not only through regulator meetings of the cabinet and technical discussions on specific relevant matters guided by the centre of the government (President´s office or Prime Minister´s office), but also inter-sectoral co-ordination mechanisms to ensure relevant institutions discuss and participate in the decision-making process. More importantly, there seems to be a greater need for technical co-ordination to ensure that solutions are backed by co-ordinated discussions.

For the regulatory process itself, the lack of formal tools to improve the quality of regulations, such as RIA or internal consultation, is a challenge to ensure that all institutions have the same vision, information and data to make correct decisions, avoiding overlaps and inconsistencies. Early and organised participation of superintendencies in the regulatory process, particularly in the sectors where they play the exclusive role of supervision and control, is essential for improving the quality of regulations as well. Due to their functions, superintendencies also have valuable information that should be used when preparing future interventions. Quality real-time data and information about developments must be produced in any given sector, so that early warnings can be identified and issues addressed that might call for a regulatory response.

For the regulatory system as a whole, inter-ministerial co-ordination would require incentives and sanctions to be introduced. Incentives could vary, but some OECD countries have relied on financial ones to ensure that the way the budget is spent is linked to better performance indicators of regulators. Today Chile´s budget allocation is mainly driven by performance through the "system of evaluation and management control", which could be used to set the basis for better regulatory performance. For instance, resource allocation in the budget is generally linked to government priorities, where regulatory issues (outputs and outcomes) could be included. In addition, some sanctions could also be envisaged, such as "name and shame" practices, in which low performers tend to be discouraged by making their limited performance public. The introduction of certain tools, such as RIA, could help in this regard, as those that prepare and use the tool could be shown as good practices within the administration, while low performers would be presented on the opposite side.

Notes

1. According to Article 65 of the Constitution, the motion cannot be proposed by more than ten Deputies or five Senators.
2. Article 14 of Law 18.918.
3. Article 19 of the Organic Constitutional Law 18.575.
4. Art. 6 of Law 18.993 that creates the Ministry General-Secretariat of the Presidency of the Republic.
5. Art. 2, No. 8 of the Decree with force of law No. 106 of 1960 that establishes regulations for the Budget Directorate.
6. In the Chilean administration, deconcentration is a process by which functions are delegatedby a higher institution to a lower one. This is normally regulated by law and the deconcentrated body has its own personality, competences and assets. It is however dependent on the hierarchy of the delegating institution.
7. Art. 1° of Law 10.336 that establishes the revised text of the Law on organisation and attributions of the Comptroller General of the Republic.
8. Articles 6, 7, 19, 20, 38, 76 and 93 of the Constitution of Chile establish principles of jurisdiction and competence, protecting citizens from abuse, illegal intervention or harm.
9. Constitution of Chile, Chapter VIII, articles 92-94.
10. Preliminary data from the 2014 OECD Regulatory Management Indicators survey.
11. See, for instance, the Policy on Conflict of Interest of the Independent regulator and competition authority for the UK communications industries (OFCOM), www.ofcom.org.uk/about/policies-and-guidelines/policy-on-conflicts-of-interest/.

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Chapter 4

Examining Chile's administrative capacities for making new regulations

Chapter 4 sheds light on how current processes for passing laws and subordinate regulations support the application of the core principles of good regulation. It describes and evaluates systematic capacities to generate high-quality regulation, and to ensure that both processes and decisions are transparent to the public. In doing so, it touches upon several practices implemented by other OECD countries such as forward planning, effective communication and accessibility of rules for regulated entities, the use of plain language when drafting and communicating regulation. The chapter also analyses the use of consultation for dialogue with affected groups and stakeholders and its consequence regarding the choice of policy instruments embodied in the figure of new regulations or other non-regulatory alternatives. Finally, it introduces the notion, and potential use, of Regulatory Impact Assessment as part of evidence-based rule-making.

This section reviews how current processes for passing laws and subordinate regulations support the application of the core principles of good regulation. It describes and evaluates systematic capacities to generate high-quality regulation, and to ensure that both processes and decisions are transparent to the public.

Administrative transparency and predictability

It is essential that the regulatory system is transparent to establish a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps protect against undue influence by special interests. Transparency reinforces the legitimacy and fairness of regulatory processes. It involves a wide range of practices, including standardised processes for making and reforming regulations, consultation with interested parties, plain language in drafting, publication, and codification. Transparency thus serves to make rules easy to understand and find, and it contributes to the implementation and appeal processes being predictable and consistent.

Forward planning

A number of OECD countries have established mechanisms for publishing details of the regulation they plan to prepare in the future. Forward planning has proven to be useful to improve the transparency, predictability and co-ordination of regulations. It encourages the participation of interested parties as early as possible in the regulatory process and it can reduce transaction costs through giving earlier notice of forthcoming regulations. International examples are shown in Box 4.1.

Box 4.1. International experiences on forward planning: Denmark

In **Denmark**, the production of new draft regulations by the executive takes place within the framework of the Law Programme, which is adopted every year and presented by the Prime Minister in her/his annual opening speech to the Parliament (*Folketing*). The preparation of the Law Programme follows a structured process, stretching from February to October, in which ministries propose draft bills and the Prime Minister's Office co-ordinates the initiatives. The objective of the Law Programme is to provide the parliament with an overview of the bills relating to government policy over the coming year. The Law Programme is also used as a steering instrument in the government's work. It is made public on the websites of the Prime Minister's Office and the *Folketing*.

- The Law Programme consists of a list of the planned bills by ministry, with a three to six-line description and mention of the expected date of submission of the bills to the parliament. It can also include more general topics, such as the cohesion of the Law Programme and the general policy goals of the government. It covers all primary regulations, and also addresses indirectly the production of secondary regulations. It includes proposals originating from the EU.
- Ministry officials are required to provide detailed information on the draft bills, which they submit for inclusion in the Law Programme. This includes spelling out purpose and content, and assessing the consequences of the bills on citizens, business and the administration, highlighting relationships to other laws, and considering the use of alternatives to regulation. These documents are not included in the Law Programme available to the public.

Box 4.1. **International experiences on forward planning: Denmark** (*cont.*)

- The Regulation Committee (chaired by the Prime Minister and consisting of the permanent secretaries of core ministries) evaluates contributions in the light of the government's general policy goals and the Coalition Agreement. The Ministry of Finance gives advice to the Regulation Committee, and collaborates with other ministries in the preparation of submissions (e.g. asking to clarify or complete their submission). The finalisation of the Law Programme is then discussed by (or handled by written procedure in) the Co-ordination Committee (the "inner Cabinet", also chaired by the Prime Minister, which approves most major new policy initiatives) and then by the Cabinet.
- The Prime Minister's Office sends a status report to the *Folketing* at the beginning of December, February, March, and April. The status reports show bills not yet submitted and their dates of expected submission. They also include possible new proposals with their description. The process for preparing the status of the report is similar to the process for preparing the Law Programme, with each ministry making contributions.

Source: OECD (2010a), *Better Regulation in Europe: Denmark*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084551-en.

In Chile there is no general practice of forward planning of regulatory activities at any level. There are, however, initial attempts by some regulatory institutions to develop regulatory agendas that help prioritise regulatory interventions and define the key topics that will be discussed among public and private entities.

Some institutions publish in advance the regulations they intend to modify to obtain comments from the general public. The National Service of Customs,[1] for instance, publishes a normative agenda for public consultation to get proposals from public and private groups and prepare the issues to be included in the next year's regulatory discussion. The Ministry of Environment, following the requirement of the Environmental Law, also prepares a "Programme for Environmental Regulation" that sets the norms to be prepared and deadlines, which also includes a consultation process with the public. The Under-secretary of Transport, through the Regulatory Committee, gives priority to a legal agenda with regard to strategic interventions the Ministry would like to promote. There is a transparent process to consult with affected parties.

Communication

Another dimension of transparency is the effectiveness of communication and the accessibility of rules for regulated entities. Regulatory transparency requires that governments effectively inform the public of the existence and content of all regulations.

In OECD countries, the publication and availability of laws and regulations have been important trends in recent years. Box 4.2 gives the example of the United States, where ICT has been used not only to make the regulatory framework available, but also to have active interaction with stakeholders. Regulations.gov is an active platform that helps consulting and communicating with the public and ensuring they directly participate in the regulatory process.

Box 4.2. **The experience of the United States with registries of laws and regulations used at the preparation stage**

In the United States, the site regulations.gov is a source for information on the development of federal regulations and other related documents issued by the U.S. Government. Through this site, citizens can find, read, and comment on regulatory issues. The site contains all final regulations, notices, scientific and technical findings, guidance, adjudications, comments submitted by others and the unified agenda and regulatory plans of institutions. The site supports the programme e-Rulemaking in the following way: after Congressional bills become laws, federal agencies are responsible for putting those laws into action through regulations. This process may include the following steps:

1. An agency initiates a rule making activity, and adds an entry to its regulatory agenda;
2. A proposed rule or other document is published in *Regulations.gov;*
3. The public is given the opportunity to comment on this rule for a specified timeframe;
4. Final rules can be accessed in *Regulations.gov*.

Rules are then published every business day by the Government Printing Office´s Federal Digital System (FDsys), www.gpo.gov/fdsys.

Source: Regulations.gov: Your voice in federal decision-making.

Communication and publication of regulatory requirements, both at early stages of the process or once they have been officially introduced, are relatively new fields of regulatory quality in Chile. They have been promoted in recent years as an effort to increase transparency and accountability in regulatory practices.

In terms of making regulations available to regulated entities, some efforts have been made to ensure the regulated entities have information available on regulatory requirements and the rules that apply to them. Traditionally, regulatory requirements have to be published in the Official Gazette (*Diario Oficial*), produced by the Ministry of Interior and Public Security, which was created by decree on 15 November, 1876. Today the Official Gazette is also published on its website www.diariooficial.interior.gob.cl. However, the site is a more informative than an active one where users could benefit from additional search options.

Furthermore, there are some registries that gather all legal inventories in Chile and make information on the legal framework available to users, being more active and offering good possibilities for communication. For instance, the registry www.leychile.cl is a free legal database of the Congress Library that offers information on more than 245 000 legal instruments. It provides search possibilities and information on the history of the law, its application, amendments over time and how they relate to other legal instruments.

The inventory Chile At Your Service (*Chile Atiende*) offers in its website www.chileatiende.cl a comprehensive centralised registry of all formalities (*trámites*). It has information on about 2 200 obligations and public services that the Chilean administration offers to the citizens. The information on formalities includes the description of the formality, the beneficiaries (including the requirements that have to be complied with), the required documents, step-by-step procedures to obtain or request the

benefits or services, cost, validity, date for delivery of the service or benefit (how long the institution requires to deliver the benefit or service to the user) and legal framework.

Law No. 19.880, Art. 48, lays down the publication of administrative acts that fall into the following categories:

a) Those that contain norms of general application or look after the general interest;

b) Those that affect an undetermined number of people;

c) Those that affect people whose whereabouts are unknown, pursuant to Art. 45;

d) Those to be published by order of the President of the Republic;

e) Those acts where the law explicitly requires their publication.

In addition, Law No. 20.285 on Access to Public Information reinforces the obligation to publish administrative acts, and the Council for Transparency is in charge of ensuring that regulators comply with this requirement. Petitions to institutions in the central administration for information have increased steadily in Chile: the Council for Transparency[2] registered around 260 000 petitions from 2009 to 2014.

Law No. 20.500 on associations and citizens´ participation in public management also requires that institutions make information available on their programmes, plans and actions through electronic means. In this way, citizens have some control over regulatory institutions, as citizens might request information on legal acts and their supporting documents.

Thus, some regulatory entities, according to the principle of active transparency, publish the legal documents they issue on their websites. For instance, the Ministry of Environment normally publishes the general economic and social impact analysis (*Análisis General del Impacto Económico y Social*, AGIES) it issues.

When it comes to regulations that might affect SMEs, before the regulation is adopted, Law No. 20.416 requires regulators to publish a form on the analysis of the impact that the regulatory intervention might bring about, explaining the reasons for the intervention and assessing the possible impacts on SMEs. In this way, it is ensured that regulators publish their RIA on SMEs but, as explained in section *potential for the use of Regulatory Impact Analysis (RIA)* in this chapter, it has not been sufficient to make it an instrument that helps to assess the impacts on SMEs early enough.

Plain language

Governments need to make certain that the public is clear about the regulatory goals, strategies, and requirements. This is essential for maintaining public confidence in the need for and the appropriateness of regulation, and an important element in ensuring compliance. Fundamentally, this requires that legal texts are clear and easily understood, even for non-legal experts. Even though technical language may be appropriate and even necessary for some stakeholders, it is important that citizens without specific sectoral expertise can understand the basic features of regulatory proposals. Several OECD countries (see Box 4.3) have explicit requirements to prepare regulations in a language that is understood by the majority of the population.

Box 4.3. **The promotion of plain language in OECD countries**

In **Germany**, the Joint Rules of Procedure provide that the language used in bills must be "correct and understandable to everyone as far as possible". Generally, bills are submitted to the relevant editorial offices to review the accuracy and comprehensibility of the language used. The federal Ministry of Justice provides support by issuing a "Manual of Legal Drafting", which is also available on the Internet. The manual focuses on concrete suggestions on content, structure and form of laws and regulations. The manual also contains technical suggestions on legal definitions, stylistic criteria, references, and other linguistic components. In 2007 and 2008, the Ministry of Justice conducted a project on "understandable legislation". The project found that the comprehensibility and clarity of draft legislation could be improved significantly by involving relevant experts, lawyers and linguists at a very early stage. As a result, such multi-disciplinary linguistic counselling was institutionalised as of 2009. Training was provided to other administrations. As part of this commitment, additional posts were created and overall ten employees within the Ministry of Justice work exclusively on easily understandable legal language.

In **Portugal,** the Rules of Procedures of the Council of Ministers include an annex, which spells out requirements concerning drafting of regulations. This provides law drafters with rules on the structure and presentation of regulations, and on formal drafting requirements. In addition to a number of style rules (such as use of abbreviations, foreign language, acronyms, *etc*.), the text requires "clarity of language". It recommends writing "short, clear and concise sentences", using a plain language level, and avoiding vague expressions. Furthermore, in the framework of the *Legislar Melhor Programme*, the Presidency of the Council of Ministers has undertaken the preparation of a practical guide for officials and institutions involved in legal drafting. The guide will be an online database, with interactive tools, hyperlinks, model examples of draft legislation, and specific guidelines.

Source: OECD (2010b), *Better Regulation in Europe: Germany*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264085886-en; and OECD (2010c), *Better Regulation in Europe: Portugal*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084575-en.

There are no provisions in Chile requiring regulators to use plain language when they draft laws and regulations. The lack of guidelines for legal drafting has meant that regulators prepare drafts without harmonised legal techniques. When the Legal Division of SEGPRES receives legal drafts from the State administration, it reviews the way in which they have been drafted, improving their quality and making them more understandable.

The project *Ley Fácil* (Easy Law – www.bcn.cl/leyfacil) is a project organised by the Library of Congress to explain the content of some laws in plain language. The Easy Law website provides information, in different formats, of the most common questions people might ask about some laws and their content. The website offers answers to those questions, in addition to providing additional information, legal background and current regulations, links to different institutions and related formalities associated to that law.

The use of consultation for dialogue with affected groups

Effective consultation is crucial to ensuring that the interests of citizens and business are taken into account in the development and design of regulation. It improves the effectiveness of regulation by drawing on the information that regulated entities have about the likely impacts of regulation. By exposing problems and potential deficiencies so that they can be taken into account, it increases stakeholder commitment and promotes a

greater likelihood of compliance. The positive effect of increased transparency and stakeholder engagement is not just confined to regulation, but is also applicable to policy and programme development and delivery.

The administration, however, cannot be relied upon to take up consultation practices unassisted. Increased public participation in rule making can present political challenges and is also an additional administrative delay to the legislative process. It therefore requires careful planning and preparation and may require cultural change to be successfully integrated within the administration. Accordingly, the OECD has found the adoption of common procedures and the publication of guidance documents to be particularly important in promoting a consistent commitment to public consultation within the administration. Guidelines on consultation serve two purposes: First, they clearly express the policy commitment of the government to require public officials to engage with the public. Second, they provide valuable technical guidance on how to design effective public consultation and integrate the views of the public.

Most OECD countries are moving towards more elaborated techniques of consultation, where stakeholders can participate in the regulatory process at an early stage and also during the posting of draft proposals on the Internet (see Box 4.5).

Box 4.5. **International experiences on consultation: Finland and Luxembourg**

Finland's longstanding and broad commitment to an open democracy has traditionally been given expression by extensive consultation with established groups. The Constitution states that "democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions". Reflecting this broad commitment to an open democracy, openness is a central goal in Finnish legislative drafting, and consultation is seen as an established part of ministries' legislative drafting process. Provisions on consultation and participation are given further weight in various laws and guidelines including the Act on the Openness of Government Activities. The Act sets legal standards for transparency and openness of drafting. It provides that, as a general rule, government documents, including preparatory work on draft regulations, should be made available to the public "as soon as they are fit for comments". The Act also requires that the authorities should inform the public on projects under development. The overall message is that ministries must ensure that they obtain or hear opinions on "a large scale". Parties likely to be affected by a proposed law must be given a chance to express their views, and lack of time must not be a pretext for neglecting this procedure. Finland has a well-anchored tradition of participative decision-making, which includes a wide range of groups, including NGOs. Strong traditions of trust and consensus building continue to frame the Finnish approach, and have helped Finland to reach consensus on how to address major policy challenges in the past. Finland has for some time also been making use of the Internet for the dissemination of information, and to give the wider public an opportunity to become engaged. There is, for example, a widespread practice of posting draft legislation on the Internet. Renewed efforts are being made to expand the use of the Internet through new portals aimed at encouraging a wider participation by citizens in policy issues.

In **Luxembourg**, public consultation relies on an administrative culture of seeking consensus. This is widely recognised as necessary for the quality and effective implementation of laws and regulations. Most draft reforms are the subject of broad consultations, formal and informal, to reach a consensus. Given the size of the country, it is fairly easy to rally different players and stakeholders around a specific proposal. When preparing a draft bill, the initiating ministry may hold informal consultations with outside experts, businesses or other advisory bodies, public or private. It may also create *ad hoc* groups. This kind of informal consultation at an early stage in the rule-making process takes place frequently, and it corresponds to a deeply

Box 4.5. **International experiences on consultation: Finland and Luxembourg** (*cont.*)

rooted tradition of consultation. In practice, consultation involves businesses primarily and, to a lesser extent, non-governmental organisations, such as trade unions. The general public is informed rather than consulted, a fact that is in part offset by the ease of access to government ("citizens can react, and they do"), and the swift circulation of information. Civil society was now intervening more actively. *Ad hoc* prior consultations on a proposal are supplemented by more formal consultation once the Council of Government has approved the preliminary draft bill. The preliminary draft then moves to the draft bill stage and is tabled in Parliament. During this procedure, the government is required to consult the Council of State and the various professional chambers (Chamber of Commerce and Chamber of Trades). The opinion of a professional chamber must be sought for any draft law (governmental initiative) concerning that particular profession. As to governmental amendments to draft bills for which their opinion has already been requested, these are transmitted to the professional chambers if the initiator of the bill deems it useful to have their opinion on the amendments proposed. The professional chambers also have the right to make proposals to government on matters within their purview, and the government must examine and transmit them to the Chamber of Deputies. The government may also decide to consult the Economic and Social Council, the tripartite body for social dialogue and consensus building. Here again, consultations tend to focus on businesses through their representatives. The use of ICT is generally confined to Internet publication of draft bills and regulations as well as (and this is just as important for transparency) the opinions of the various bodies consulted during the formal process. Draft bills and Grand Ducal regulations may thus be consulted at the website of the Chamber of Deputies as soon as they are tabled, as may the opinions of the professional chambers, the parliamentary committees and the Council of State. The Economic and Social Council also publishes its opinion at its website. Rulings of the Administrative Court, the Court of Cassation and the Constitutional Court may also be consulted via Internet. The opinions of the Council of State (*www.ce.lu*), the Chamber of Commerce (*www.cc.lu*), the Chamber of Trades (*www.cdm.lu*), the Chamber of Employees (*www.csl.lu*), the Chamber of Agriculture (*www.lwk.lu*), the Chamber of Public Officials and Employees (*www.chfep.lu*) and parliamentary proceedings in the Chamber of Deputies (*www.chd.lu*) are made public and can be consulted in print or via the Internet.

Source: OECD (2010d), *Better Regulation in Europe: Finland*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264085626-en; and OECD (2010e), *Better Regulation in Europe: Luxembourg*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264095113-en.

Public consultation in a systematic way is a relatively new practice in the Chilean administration. The participation of civil society is uneven and many consumers´ associations or civil society´s organisations are relatively new, limiting their capacity to participate in the regulatory process. Businesses are better organised and have more stable and formal mechanisms to interact with regulators. Some institutions have established formal public-private dialogue mechanisms. For instance, the Ministry of Transport and Communication established the Council of Civil Society that includes representatives from the civil society who actively participate and contribute in the regulatory process. The Ministry of Economy, Development and Tourism for instance, has the Consultative Council on SMEs, which provides inputs and opinions when the Ministry is defining interventions affecting SMEs and provides recommendations on strategies to promote SMEs´ development and growth.

Initial requirements for public consultation are found in Law No. 19.300, the Environmental Act, enacted in 1994. However, it was Law No. 20.500 on Associations and Citizens´ Participation in the Public Management, enacted in 2011, which has introduced the first requirements about public consultation in the regulatory process. The

Chilean State recognises with this law the right that citizens have to participate in government policies, plans, programmes and actions. It encourages institutions of the national administration to include four types of citizens´ participation: access to relevant information, public consultation, participatory budget and civil society councils. However, this law allows institutions to decide what would be the best methodology for implementation, and it does not impose harmonised criteria and procedures for such participation.

Initial principles on consultation have been introduced, but much has still to be done to systematically offer affected groups the possibility of participating in the regulatory process. The government of Chile has published a *Methodological Guidance to Implement Mechanisms of Citizen Participation*,[3] which includes the practice of public consultations. According to the guidelines, public consultation can be face-to-face (through participatory dialogues) or virtual (through on-line participatory means). Other techniques could also be promoted, depending on the capacities and resources of the institutions.

In August 2014 the government of President Michelle Bachelet reinforced the idea of improving public participation through Presidential Instruction No. 7,[4] which promotes the implementation of Law No. 20.500. Government institutions are requested to revise and update their practices for public participation to broaden mechanisms that allow new forms of citizens´ engagement. In addition, a Unit of Public Participation should be created in each institution in order to ensure that public participation is guaranteed in the various phases of the policy design and implementation. The government instruction also promotes the adoption of other tools and forms of public participation, such as public hearings, on-line participatory platforms, digital meetings, etc.

Nevertheless, there are still limited processes that ensure public participation in the preparation of regulations. There are some consultation mechanisms on certain regulations, but there are no formal and compulsory requirements for the whole of the State administration on how to conduct public consultation and under which criteria to do so. Some materials, such as draft proposals and sometimes technical explanatory notes, might be posted on the website of the regulatory institution, and if the institution so decides, it can request comments from the public. Institutions can also use social networks to inform the public and invite third parties to participate in the consultation process. But there are no clear deadlines for posting a regulatory draft for public notice and comments. Some institutions might give up to 45 days to receive contributions from the public. Institutions are not obliged to reply to comments, but some of them do it as a good practice and the Ministry of Environment, for instance, has adopted it as a compulsory practice.

Consultation so far is also conducted on an informal basis, depending on the willingness of the regulatory institution, even if more institutions try to have some consultation procedures in their regulatory processes through the issuing of specific resolutions for that purpose. In more informal consultations the regulatory institutions invite specific groups or actors and they can establish working groups or public-private committees.

In addition to those practices, it is compulsory to conduct a consultation with indigenous groups as a result of signing Convention No. 169 of the International Labour Organization, which deals specifically with the rights of indigenous and tribal peoples. The spirit of consultation and participation constitutes the cornerstone of Convention No. 169 on which all its provisions are based. The Convention requires that

indigenous and tribal peoples should be consulted on issues that affect them. It also requires that these peoples should be able to engage in free, prior and informed participation in the policy and development processes that affect them. Chile has regulated this Convention in Decree 66 of 2013[5] from the Ministry of Social Development. This type of consultation is compulsory and applies to all issues that might affect indigenous groups. The decree includes how and when the consultation has to be undertaken, and it imposes the obligation to prepare a resolution by the responsible institution. The government institution has to publicise the consultation process in two publications in the region and bring the various groups into the consultation process. This process has five phases, and each phase has to be complied with within 25 working days if concerns primary regulation and within 20 working days if it concerns secondary regulation.

In the case of technical regulations, Decree No. 77 of 2004[6] of the Ministry of Economy, Development and Tourism establishes the consultation process according to the agreements of the World Trade Organisation. For that purpose, public consultation has a period of 60 days, and the regulator has to provide all technical information on the proposal for whoever is interested.

Choice of policy instruments: regulations and alternatives

Critical to the administrative capacity for good regulation is the ability to choose the most efficient and effective tool, whether regulatory or non-regulatory, to meet a policy objective (see Box 4.6). The use of alternative policy tools is growing in OECD countries. This follows experimentation, shared learning and an increased understanding of the potential role of markets. Typically, however, there are disincentives for public servants to be innovative: the use of untried methods carries risks and bureaucracies are inherently conservative. Reform authorities must take a clear leading role in supporting and promoting alternatives to traditional regulatory approaches if innovative alternatives are to be developed and implemented.

Box 4.6. **Exploring the use of alternatives to regulation in OECD countries**

The first response by governments to a perceived policy issue is often to regulate, but it may be appropriate to ask whether traditional regulation is the best possible course of action. In many situations there may be a range of options other than traditional "command and control" regulation available. The alternatives to traditional regulation fall into three main categories: market-based instruments, self-regulation and co-regulation approaches, and information and education schemes. OECD countries are increasingly experimenting with the use of alternatives to regulation, mainly in association with the use of RIA.

In **Australia**, the *Best Practice Regulation Handbook* requires that the Regulatory Impact Statement (RIS) include consideration of a range of regulatory and non-regulatory alternatives. The handbook promotes the early consideration of alternatives when examining the need for regulation. It provides guidance and identifies the strengths and weaknesses of a range of alternative approaches, including examples of where they could be applied. There is no preference expressed for a particular regulatory approach, the appropriate solution should be identified based on the features of the policy problem and deliver the greatest net benefit compared to other possible options. In all cases where new regulation is being considered, self-regulation is required to be examined in a RIS. The training for departments provided by the OBPR includes discussion of the range of alternative instruments and their application.

Box 4.6. **Exploring the use of alternatives to regulation in OECD countries** (*cont.*)

In **Germany**, the Joint Rules of Procedure of the federal ministries stipulate that draft regulations must be accompanied by an explanatory memorandum, which among others must establish:

- whether there are other possible alternatives to regulation;
- whether the identified policy objective can be performed by private parties; and
- the considerations that led to the rejection of non-regulatory options.

An annex to the Joint Rules provides a checklist for identifying opportunities for self-regulation:

- What kind of regulation arrangement is appropriate to address the problem? Is self-regulation sufficient? What structures or procedures should the state provide to enable self-regulation? Would it be possible for the state to make self-regulation mandatory?
- Provided the task can be carried out by non-governmental or private bodies: how is it ensured that the non-governmental service companies will provide their services for the common good (nation-wide coverage, *etc*.)? What regulatory measures and bodies does this require? How is reassignment of tasks to governmental institutions ensured in the case of bad performance?
- Can the problem be solved in co-operation with private bodies? What requirements for the legal design of such co-operative relationships should be imposed? What practical design is suitable and necessary to enable or support such co-operative relationships in organisational terms?
- If it seems that the problem can only be solved adequately on the basis of a programme or other target-oriented basis: what minimum content of regulation is required by the rule of law (*i.e.* stipulations on competence, aims, procedures, *etc*.).

Denmark is relatively experienced in the use of alternatives to traditional regulation, including a range of economic instruments and voluntary and co-regulatory approaches. The use of these tools has expanded recently, notably adoption of a green tax programme. The relative underdevelopment of regulatory impact analysis is notable. Promising new practices include a model enterprise project under development to obtain more detailed information on likely regulatory costs and benefits, and adoption of an annual report to the parliament summarising aggregate regulatory costs due to new legislation. The process for making regulations in Denmark includes a requirement to consider alternatives to regulation at an early stage. In their contributions to the Law Programme, ministries send a description of planned individual laws, which has to include an assessment of possible alternatives to regulation. As noted above, a key objective at this stage is in fact to determine whether or not go ahead with a draft law. The Ministry of Economic and Business Affairs has issued guidance material to strengthen the capacities of ministries to assess the possibility of using alternatives to "command and control" regulation. The guidelines, which are available on the Internet, were published in March 2001. They define alternatives to regulation, review the main types of alternatives, and give examples of how to use them in a number of practical situations. They list self-certification, voluntary agreements, co-regulation, and information, as the major alternatives to regulation.

Source: OECD (2005), "Alternatives to Traditional Regulation", OECD, Paris, www.oecd.org/gov/regulatory-policy/42245468.pdf; OECD (2010b), *Better Regulation in Europe: Germany*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264085886-en; OECD (2010a), *Better Regulation in Europe: Denmark*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084551-en; and Government of Australia (2010), *Best Practice Regulation Handbook*, Canberra.

There are no formal mechanisms in Chile to integrate the use of alternatives to regulation. Since there is no formal and systematic use of impact assessment, there is no explicit requirement for regulators to assess the possibility of "doing nothing" and explore different alternatives to intervene. Similarly, there are no technical capacities that could be used to promote the use of alternatives to regulation in a formal way, even if some regulators are familiar with alternatives and in some regulatory fields the use of alternatives is promoted.

Even if there are no formal mechanisms to delegate regulatory powers to semi or non-governmental bodies, there are examples of co-regulation or self-regulation. For instance, the National Forestry Corporation (*Corporación Nacional Forestal*, CONAF) has developed co-regulatory practices in protected areas of the State, which incorporate the following practices:

- Accredited volunteers and people who live close to those areas to participate and collaborate in the management of natural and cultural resources, based on specific agreements.
- Third-party concessions and contracts will be regulating the delivery service of some activities, such as the development of research and studies, and services offered to visitors.
- Consultative councils at regional and local level, composed of key stakeholders concerned by the protected area.
- Third-party concessions are responsible for the management of the units in charge of developing recreational services and eco-tourism projects.
- Participation of local communities living close to the protected areas will be promoted within the concessions.

In terms of professional associations and the possibility of promoting self-regulatory or co-regulatory mechanisms, the current regulatory framework of professional associations recognises them as "union associations" (*asociaciones gremiales*) and not as "professional associations" (*colegios de profesionales*), which has implications for their competencies and responsibilities. For instance, the Constitution prohibits requiring membership in an association in order to do business or to develop a profession. Consequently, associations lack the leverage to make anti-competitive self-regulation effective.

Legal review of regulatory proposals

Conducting an adequate legal review is an important phase of the regulatory process. Legal reviews contribute to ensuring the legality, constitutionality and predictability of regulatory interventions, and reducing the cost of bad regulations. Many OECD countries have standardised procedures for legal reviews, which contribute to improving the quality of regulations (see Box 4.7).

Two institutions play relevant roles in ensuring the quality of legal drafts in Chile. The first one is the SEGPRES and the second one is the Comptroller General of the Republic (CGR) through an ex ante control of the legality (toma de razón, in Spanish), mainly of regulations (reglamentos). To a certain extent, the Constitutional Court also conducts legal reviews, and there is some form of quality control undertaken by citizens if

they have the chance to participate in the regulatory process thanks to consultation procedures.

Box 4.7. **Improving technical legal analysis in Italy**

Since 2000, **Italy** has acquired significant experience in performing Legal Technical Analysis (*Analisi tecnico-legislativa*, ATN) to evaluate the quality of legal texts. The timing and methodology to carry out ATNs were revised in September 2008 by a directive of the Presidency of the Council (10 September 2008). This includes assessing the implications on the legal order, in light of the jurisprudence, and presenting it jointly with the technical-financial analysis and the RIA. As a result, more emphasis is put on the analysis of the national and international context, as well as on the quality of drafting and legal consistency of the legislative proposal. The directive also fosters enhanced collaboration between the legal offices of the sectoral administrations. The ATN is transmitted by the latter to the Legislative Office (*Dipartimento per gli affari giuridici e legislative*, DAGL), which is responsible for the inclusion of the legislative proposal in the agenda of the Council of Ministers.

Over the years, both the government and the legislative have issued a number of circulars and guidelines on legal drafting. In 2001, the Presidents of the Chamber, the Senate, and the Council of Ministers jointly adopted new circulars on the technical drafting of legal acts. In the same year, the Presidency of the Council of Ministers issued a guide for the implementation by the government of the above-mentioned circulars. In the government, the responsibility for drafting quality lies with the DAGL. In 2002, the Ministry for Public Administration issued a circular on simplifying the language of administrative acts. More recently, the USQR and the DAGL have worked towards establishing a national "Chart for Regulatory Quality".

Source: OECD (2010f), *OECD Reviews of Regulatory Reform: Italy 2009: Better Regulation to Strengthen Market Dynamics*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264067264-en.

The SEGPRES receives draft laws and decrees from any institution with regulatory powers and it reviews their legality before sending them to the President´s Office for approval or signature. In addition to the legal review, SEGPRES also examines the political suitability and interests of any draft regulation. SEGPRES plays a quality control role that is generally not used for all secondary regulations, with the *reglamentos* as an exception.

The *ex ante* control of legality carried out by the CGR is a preventive, *ex ante* verification of the legality of certain administrative acts, exclusively focused on legal compliance with regard to the whole spectrum of the national and applicable international legal framework (the Constitution, international treaties, laws and regulations). Article 99 of the Constitution establishes that the CGR has the authority to record and perform the *toma de razón* of administrative acts. However, the CGR Organic Law gives the institution considerable discretion over the *toma de razón* process and it may exempt administrative acts other than those issued by the President of the Republic. All administrative acts subject to this process must be processed by the CGR before being published in the Official Gazette (*Diario Oficial*). In the event of violation of these provisions, the CGR has authority to impose administrative sanctions on the official responsible.[7]

Toma de razón is a function deeply integrated into the Chilean administration and is seen by the CGR as important control of the preservation of law and order that can be associated with the legitimacy of administrative action and trust in government. However, it is not a normal function of other supreme audit institutions around the world. The broad

application of *toma de razón* may undermine incentives for the heads of public entities to strengthen their internal control frameworks as a key management system. Heads of public entities and other public officials may choose to rely on the CGR to review the legality of their administrative acts *ex ante*, rather than investing in the development of strong, independent internal control mechanisms that could reliably fulfil the purpose to respect and act in alignment with Chile's legal system. Or public entities may pay excessive attention to the acts that will be subject to *toma de razón*, thereby duplicating efforts and incurring costs in the use of internal control units.

CGR authorisation through the *toma de razón* gives a presumption of legality (*presunción de legalidad*) of an administrative act. Insofar as the CGR examines the legality of administrative acts through this process, a conflict may arise when and if an *ex post* audit questions the legality of, or finds related problems with previously examined administrative acts.

The CGR Organic Law defines the general scope, criteria and procedure for the *toma de razón*. The Comptroller General may review the administrative acts of the President of the Republic, the heads of public entities[8] and acts of certain public services.[9] Lower level administrative acts, such as instructions, *oficios*, ministerial orders or opinions, are exempt from this process. Specific laws may exempt particular types of administrative acts from *toma de razón*. For example, administrative acts of Chile's 345 municipalities are exempt from the legal review by the Organic Constitutional Law on Municipalities.[10] Administrative acts of the Council for Transparency (*Consejo para la Transparencia*) are also exempt from it under the Transparency and Access to Information Law.[11] Administrative acts related to economic, social and environmental regulation issued by an independent regulatory agency (*superintendente*) and those of the Public Prosecutor (*Fiscalía*) are also exempt from *toma de razón*.

The *toma de razón* applies to administrative acts that have direct budgetary consequences above a certain threshold (Arts. 7, 8 and 9 of Resolution 1600/2008) as well as those related to general economic, social and environmental matters, including *reglamentos*, other than those issued by a regulatory agency.

The CGR Organic Law establishes a deadline for the *toma de razón* as 15 working days after receipt of the administrative act from the administration. The Comptroller General, by means of a justified resolution, if there are serious and specific reasons, may extend this period for a further 15 days.[12] The CGR must inform the Chamber of Deputies of the list of decrees that have not been dispatched within the specific period of 15 days with the reason for the extension.

Through the *toma de razón* process, the CGR may either:

- approve (*tomar razón*) the administrative act, stamping the act with "Contraloría General de la República – Tomado Razón",
- approve the administrative act with interpretation (*tomar razón con alcance*), adding a comment on the administrative act that complements or rectifies it, or
- reject (*representados*) the administrative act because it is considered illegal or unconstitutional.

The CGR must inform SEGPRES of all administrative acts that it rejected through the *toma de razón* process. Formally, the SEGPRES channels this information to the relevant public entity so that the matter may be recorded in the relevant official's records and the corresponding authority may initiate disciplinary measures, as appropriate. But

SEGPRES does not have a role in overseeing and guiding these legal units, raising concern over the ability to systematically address errors in administrative acts. The President of the Republic does not have the power to insist with the Comptroller General and he or she may force the issuance of an administrative act rejected by the CGR by using an insistence decree (*decreto de insistencia*) signed by all the ministers of state. The Constitution in Article 99 establishes that the Comptroller General must permit (*cursar*) an insistence decree irrespective of any observations that he or she may have regarding the original administrative act (with the exception of rejections based on unconstitutionality or expenditure decrees that exceed the limit laid down by the constitution). The Comptroller General may also initiate *ex officio* or when explicitly requested by the President of the Republic to authorise the enactment of administrative acts before they have been the subject of the *toma de razón*. In case of further controversy, the Constitutional Court could be called on to find a solution.

Potential for the use of Regulatory Impact Analysis (RIA)

Among the various tools for regulatory management, the use of RIA has particular prominence in OECD countries as a systemic mechanism to assess the benefits of regulatory proposals *ex ante*, and evaluate whether the estimated benefits of proposed regulation exceed the estimated costs. The OECD has been a long-standing advocate of the use of RIA for this purpose.[13] The *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012) advises governments to integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals; to clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals; and to consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best one.

In Chile there is no systematic use of RIA within the public administration at the central level. Some initial efforts, however, have been introduced to start assessing the likely impacts of draft regulations. Some of those efforts are the following:

- The SMEs Statute (*Estatuto PyME*), based on Law No. 20.416 that sets Special Rules for SMEs, has introduced the use of some form of an *ex ante* assessment in the case of regulations that potentially affect SMEs. To complement Article 5 of the Law, which establishes the procedure for preparing such an assessment, Supreme Decree No. 80/2010 of the Ministry of Economy, Development and Tourism was introduced in July 2010, coming into force in September 2010. This decree lays down that ministries or institutions that prepare general legal acts that might affect SMEs should publish the preparatory analysis that support the draft regulation, at least 15 days before they send it for legal review to SEGPRES, including an estimation of the regulatory impact on SMEs in a special form that has been prepared for the entire administration. The Ministry of Economy, Development and Tourism has to be informed about those proposals before they are adopted. The SMEs Division of the Ministry is responsible for implementing this procedure and for offering guidance on how to prepare the assessment. The SMEs Statute should be made available to the public by the institution that originates the draft proposal, and the Ministry of Economy, Development and Tourism compiles the SMEs Statutes on the Regulation SMEs website (www.regulacionesmipyme.cl) (see Chapter 5)

- Law No. 20.416 is not yet fully implemented, despite this obligation being in force in Chile for several years. Not all regulations are published in the Official Gazette, which makes difficult for the Ministry of Economy, Development and Tourism to follow up all regulatory interventions that potentially affect SMEs. Therefore, results are mixed, as few institutions have included this procedure in their formal rule-making process. Unfortunately, they have done it more as a way to comply with the requirement of the Transparency Law than as a way to assess potential impacts on SMEs and improve their interventions. For instance, the Sub-secretariat of Fishing, which prepared 344 out of 480 assessments between 2010 and 2013, does so on issues that are repetitive requirements and veda periods. Several issues, which were described before, explain this uneven use of this specific type of *ex ante* assessment on SMEs.

Table 4.1. **Evolution of the use of the SMEs Statute**

	2010	2011	2012	2013	Total 2010-13
SMEs Statutes prepared	94	108	133	145	480
Total of regulations that potentially affect SMEs and were published in the Official Gazette	122	323	334	634	1 413
% of SMEs Statutes presented/Total regulations issued potentially affecting SMEs	77%	33%	40%	23%	34%

Source: Ministry of Economy, Development and Tourism SMEs Division, 2014.

- The Ministry of Environment has been conducting *ex ante* assessments in the case of plans, regulations and rules that might affect third parties and the environment. The AGIES (*Análisis General de Impacto Económico y Social,* General Analysis of Economic and Social Impacts) is based on Law No. 19.300 on the General Basis of the Environment and the Regulation to Issue Norms on Environmental Quality and Emissions,[14] and the Department of Environmental Economics of the Ministry of Environment conducts it. The same Department has published a Methodological Guideline to Prepare AGIES for Management Instruments for the Quality of Air (Government of Chile, 2013) and it is preparing additional materials for other resources, such as water and soil. AGIES include a cost-benefit analysis and specific training has been provided to increase the technical capacities of the government officials in charge of the assessments. AGIES are prepared before the regulation is issued and they are posted for public consultation.
- The Superintendency of Stocks and Insurance (*Superintendencia de Valores y Seguros*) has established a dedicated unit to conduct RIAs. They are at the initial stages of implementation, preparing documents, such as guidance material, to adapt the use of RIA to the specifics of the sector.

The capacity to introduce the use of RIA in a more systematic and co-ordinated way will depend on a number of factors, which can only be addressed if there is a clear political commitment to integrate the use of the regulatory tool in the decision-making process. The recognised need to improve the way public policies and regulatory interventions are substantiated, the selection of instruments to intervene, the rationale to opt for a given intervention, the adequate identification of affected groups and stakeholders, as well as the assessment of potential costs and benefits of the intervention might help to accelerate the use of RIA in Chile.

The SMEs Department of the Ministry of Economy, Development and Tourism is currently working on a proposal to review Law No. 20.416. The aims are: to improve the framework of the *ex ante* impact assessment on SMEs, including issues such as the obligation of the regulatory institution to send the proposal to the Ministry of Economy, Development and Tourism for comments; to increase from 15 to 30 days the publication of the preparatory documents on the website, including the SMEs Statute and before issuing the regulation; including a threshold in the SMEs Statute to differentiate the type of impacts of the regulatory intervention and, based on that classification, the high- and moderate-impact *ex ante* assessments would follow a new procedure.. The proposal has not yet been adopted.

Road map to implement RIA based on international good practices

RIA is fundamental for consolidating a comprehensive regulatory approach since it is a tool that provides objective elements, such as costs, benefits and options for decision-making. A RIA system can only be consolidated and improved over time. Based on good international practices, the following issues, combining various elements at different stages of the RIA design and implementation, should be taken into consideration. The road map to implement RIA in Chile requires evaluation of the following issues:

Box 4.8. **Maximising political commitment to RIA**

There are various RIA systems in OECD countries, depending on particular administrative, economic and political contexts. International experience shows, however, that the most successful RIA systems are those where there is clear political commitment to the use of the tool. Political commitment can be expressed in various forms, but the most common one is a clear recognition of the obligation to conduct RIA, its role in decision-making and the way the tool contributes to promote regulatory quality in the country.

In the **United States**, the principal tool for measuring the effects of proposed federal regulations is RIA, which was pioneered beginning in 1974 with inclusion of benefit-cost analysis in Inflation Impact Assessments. In fact, the United States was the first country to adopt broad requirements for benefit-cost analysis for regulation. Full RIA has been required by executive order for all major social regulations from 1981, with the Office for Management and Budget (OMB) responsible for quality control. The value of RIA has been considerably enhanced by its full integration into the public consultation process. Political commitment to RIA has come from the highest political level in the United States. The obligation to carry out RIA has, since its inception in 1981, been through executive orders. Moreover, each president since 1981 has issued his own revision of RIA, ensuring that the commitment to this tool is reaffirmed.

In **Mexico**, the use of RIA was formalised through amendments to the Federal Law of Administrative Procedure, in 2000. RIA became compulsory for all types of legal measures of general application that create compliance costs, from formats to major implementation rules. They have to be submitted to COFEMER, except for the subjects that the law explicitly excludes, like those of a fiscal nature, or acts by sub-national administrations (states or municipalities). Ministries and regulatory agencies are responsible for elaborating RIAs, while COFEMER is responsible for reviewing them. RIAs include a discussion of the problem to be addressed, objectives, obligations to be imposed, alternatives considered, potential costs and benefits and other relevant impacts, risk and competition analysis, mechanisms of implementation, monitoring and evaluation, and the results of public consultation.

Source OECD (1999), *OECD Reviews of Regulatory Reform: Regulatory Reform in the United States 1999*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264173989-en; and OECD (2014), *Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264203389-en.

Maximise political commitment to RIA. The OECD experience shows that the use of RIA to support reform should be endorsed at the highest levels of government. In many countries, this is renewed with each change of government. RIA should be supported by a legal instrument that makes it compulsory for entities inside the administration (Box 4.8).

The current lack of a regulatory reform programme and policy at the central level has hindered the full design of a RIA system in Chile. RIA is currently not anchored in any government programme to promote regulatory quality and it does not appear as a tool that is promoted at the highest political level to improve the quality of the regulations. It is therefore difficult to envisage a full implementation of a RIA system in the current situation, as political support is required to make the use of the tool compulsory and establish quality control mechanisms that ensure the tool is properly used.

The various efforts introduced so far in the Ministry of Economy, Development and Tourism and the Ministry of Environment show that it is possible to make use of RIA in Chile. Political commitment is, however, necessary to ensure that regulators accept their use in a routine way. In addition, decision-makers need to get used to integrating a solid analysis in the decision-making process and exposing the analysis to public scrutiny.

Any RIA system in Chile will also require having well-established quality control mechanisms. This implies designing a system where a specific institution is clearly given the responsibility to review the quality of the RIAs prepared and ensure they meet quality standards and criteria.

Allocate responsibilities for RIA programme elements carefully. Experience in OECD countries shows that RIA will fail if left entirely to regulators, but will also fail if it is too centralised. To ensure ownership by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA are often shared between ministries and a central quality control unit.

Today, there are only a few institutions practising the use of some form of *ex ante* assessment, namely the one focused on the impacts on SMEs and the AGIES in the environmental field. In both cases, the legal framework allocates responsibilities for those that have to conduct the RIAs: in the case of the SMEs, for instance, any institution passing a regulation that potentially affects SMEs is obliged to conduct that *ex ante* analysis, while in the Ministry of Environment it is the Department of Environmental Economics that is responsible for preparing the AGIES.

In each of the cases, however, no single institution plays the "challenge" function, e.g. reviewing the quality of the RIAs prepared, as the SMEs Division in the Ministry of Economy, Development and Tourism does not have the power to supervise the quality of the assessments it receives from different institutions in the administration. The SMEs Division only receives the RIA if the institution that prepared it is willing to provide it. Otherwise, it is the SMEs Division who needs to look for information and keep track of the regulations that are passed via SEGPRES. Sometimes they even get the information too late in the process, when regulations have already been published in the Official Gazette. Furthermore, assessments are generally incomplete or of bad quality, without any of the cost quantification laid down by the proposal. The SMEs Division does not have the power to send them back and ask for improvements.

In the case of the Ministry of Environment, the Department of Environmental Economics is responsible for the preparation of the AGIES, but there is no formal quality control mechanism once the assessment is finalised. The results of the analysis have to be presented to the Operational Committee of the proposed norm or regulation, the

Consultative Council that exists in the ministry, a process of public consultation and the Committee of Ministers for Sustainability, which can express opinions on the norm and the AGIES.

Any form of RIA system to be set up in Chile will require a careful distribution of responsibilities among the different institutions. RIA should be a tool designed for most of the regulatory interventions and; in that sense, most regulatory institutions should prepare a RIA. Moreover, there is a need to design a quality control mechanism that will contribute to integrating the use of the tool in decision making and improve the quality of the analysis over time.

Train the regulators. Regulators must have the skills to prepare high quality economic assessments, including an understanding of the role of RIA in ensuring regulatory quality and an understanding of methodological requirements and data collection strategies. All complex decision-making tools, such as producing adequate RIA, demand a learning process. Several OECD countries have engaged in creating capacities and providing guidance to regulators to conduct RIA (see Box 4.9).

Box 4.9. **International experience on guidance to carry out RIA**

In **Australia**, the *Victorian Guide to Regulation* provides a framework for the design and assessment of government regulation. The *Victorian Competition and Efficiency Commission* (VCEC) provides a good example of methodological guidance to prepare RIA. The Commission meets the departments preparing RIA early in the process of policy development and at key moments. It also offers regular and free training workshops for policy officers who prepare RIA to provide them with an introduction to the process and equip them to prepare high quality analyses (i.e., cost-benefit analysis). The VCEC may debate the quality of problem definition, data, analysis, and alternatives examined, but does not take policy positions. It may also provide lists of consultants to support departments in preparing RIA, but does not endorse any provider. Finally, the VCEC has developed guiding materials on cost effectiveness, cost recovery, costing methodologies, the suggested value of a statistical life, and consultation practices, among other topics.

In **Canada**, the Cabinet Directive on Streamlining Regulation (CDSR), published in 2007, has introduced a life-cycle approach to regulatory management and a number of new processes, co-ordination, and analytical requirements. It applies to all departments and agencies involved in the federal regulatory process. Government officials are responsible for abiding by the CDSR at all stages of the regulatory life cycle, i.e., development, implementation, evaluation, and review. The CDSR has marked a fundamental change in approach to federal regulation. It stresses that regulations are only one of several policy instruments available to government and that they may not always be the most effective option. When a public policy issue arises and it is determined that government intervention is required, regulatory organisations must assess the effectiveness and appropriateness of both regulatory and non-regulatory instruments before proceeding. Regulations must be viewed not in isolation but rather as part of a mix of complementary instruments that work together to address a public policy issue. They should be chosen only after the full range of instruments has been analysed.

Recognizing that it may take a number of years for regulatory organisations to fully develop the internal capacity to meet these requirements, the Treasury Board of Canada Secretariat has created the Centre of Regulatory Expertise (CORE) to assist in this endeavour. CORE provides expert advice and services to help departments build their internal capacity to develop sound, evidence-based regulatory proposals. CORE experts offer the following guidance:

- Analytical services to support regulatory development work, especially in areas of risk assessment, cost-benefit analysis, performance measurement, and evaluation plans;

Box 4.9. **International experience on guidance to carry out RIA** (*cont.*)

- Coaching and advisory services to assess progress in regulatory development and provide ongoing feedback and advice;
- Workshops and presentations on one or more aspects of regulatory development, tailored to your team's needs; and
- Peer review to critique and provide feedback on completed analyses before finalising a regulatory submission.

CORE also collaborates with the Community of Federal Regulators and the Canada School of Public Service (CSPS) to develop and promote best practices and learning opportunities for federal regulators. For example, a core curriculum of regulatory training has been developed by CSPS to provide participants with a basic understanding of the federal regulatory process, the regulatory life-cycle approach, and the changes occurring under the CDSR.

Source: Victorian Competition and Efficiency Commission (2015) website, www.vcec.vic.gov.au and Treasury Board of Canada Secretariat's website www.tbs-sct.gc.ca . (both accessed 1 March 2016)

Training on regulatory quality tools, and particularly on RIA, has been a serious challenge in the Chilean administration. For instance, since 2012 there has not been any training on the SMEs Statute and this is why there are no technical capacities that could support government officials when conducting quantification as part of the impact assessment or replicating the knowledge in their institutions. The Ministry of Environment, however, has published methodological guidance material on how to assess the costs and benefits of certain environmental areas, such as air pollution.

The implementation of RIA at the central level has to be accompanied by a comprehensive capacity-building programme that could help regulators to learn how to use the tool and to improve over time using more sophisticated quantification techniques. Training and capacity-building activities are essential for a well-sustained RIA system in Chile.

Use a consistent but flexible analytical method. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." A cost-benefit analysis is the preferred method for considering regulatory impacts because it aims at producing public policy that meets the criterion of maximising welfare.

The current guidelines used in the framework of Law No. 20.416 are not compulsory and consequently they are used by a limited group of institutions in Chile. The SME statute even denies any sanction in the case where the obligation is not fulfilled, which is an unusual situation in Chilean law. The Form to Estimate the Regulatory Impact on SMEs (*Formulario de estimación de impacto regulatorio en empresas de menor tamaño*) requires some monetised estimation of the regulatory costs associated with the proposal. But since the Ministry of Economy, Development and Tourism has not been able to challenge the quality of the RIAs prepared, the quality of analysis is rather poor and limiting to qualifying the type of intervention that is envisaged by the regulatory institution. Therefore, the suggested methodology, namely to measure costs imposed on SMEs, is hardly ever used.

In the Ministry of Environment, in contrast, the Department of Environmental Economics follows a methodology based on cost-benefit analysis, not always easy to

implement as the lack of information and methodological constraints hinder a full implementation of cost-benefit analysis. However, the Department has evolved in the use of the methodology and has gradually been including the analysis of benefits, such as health issues, gender perspective, equity, impact on indigenous communities, etc. The department has tried to train the technical staff, but much has still to be done to improve the use of the methodology.

If Chile is to use RIA in a systematic way, the government needs to carefully select the methodological approach to be followed by the central public administration. This requires a clear understanding of the current capacities, the future needs in terms of training and capacity building, the availability of data and information, and the need to strengthen the link to transparency and public consultation. A gradual approach might be required in order to create the capacities and slowly move towards more quantitative analysis.

Target RIA efforts. RIA is a difficult process often opposed by ministries unfamiliar with external review or under time and resource constraints. The preparation of an adequate RIA is a resource-intensive task for drafters of regulations. Experience shows that central oversight units can be swamped by large numbers of RIA concerning trivial or low impact regulations. OECD countries have opted for different approaches to target RIA and identify high-impact regulations that might require a more intensive analysis before a decision is taken (see Box 4.10).

Box 4.10. **Targeting RIA efforts in OECD countries and classifying types of impacts**

In the **United States**, a full benefit-cost analysis is required if a regulatory measure is deemed "economically significant", if it is expected to represent annual costs exceeding USD 100 million; if the measure is likely to impose a major increase in costs on a specific sector or region; or if it will have significant adverse effects on competition, employment, investment, productivity or innovation. The United States' Office of Management and Budget reviews roughly 600 regulations a year (15-57% of the regulations published), of which fewer than 100 (1-2% of the regulations published) are considered "economically significant".

Korea has introduced mechanisms to target RIA. The Regulatory Reform Committee (RRC) decided in April 2004 to target its review of RIA to those dealing with "core regulations" RIA conducted on other regulations are subject to review by the Internal Regulatory Reform Committee (IRRC) under the relevant ministry. Core regulations are those which:

- have over KRW 10 billion (approximately EUR 8.5 million) of annual cost of regulatory impact;
- affect over one million regulated people;
- explicitly restrain competition;
- are excessive or unreasonable in light of international standards; or
- are recognised by the RRC as in need of review because a regulation is controversial among related ministries or stakeholders, or has significant social and economic ramifications.

This is a useful mechanism for the RRC to focus its oversight and resources on those regulations which are likely to have significant economic or social impacts, while still ensuring that the RIA conducted on non-core regulations are subject to oversight and quality control by the IRRC in each ministry.

Box 4.10. **Targeting RIA efforts in OECD countries and classifying types of impacts** (*cont.*)

In **Australia**, the Commonwealth government has a number of checks and balances to ensure that the efforts that are applied to RIA are proportionate to their potential to improve the quality of regulatory proposals. In one respect the application of RIA to regulatory instruments is very broad. RIA is intended to apply to the full range of policy instruments including laws, subordinate legislative instruments, and quasi regulation (which can include any government policy where there is an expectation of compliance). However, there is a general principle that where a RIA is prepared the level of analysis is required to be proportionate to the magnitude of the policy impact expected from the regulatory proposal. There is also a type of triage process based on a three-tiered assessment system to determine the level of impact of a regulatory policy proposal. All regulatory proposals are required to undergo a preliminary assessment based on a simple checklist to reveal the potential for the proposal to increase compliance costs for business or other potential impacts on business and individuals or the economy. The officer completing the checklist signs and files it with the Best Practice Regulation Co-ordinator within their department. If the checklist identifies no or very low impacts, then no further analysis is required. Impacts would be considered low when only a few businesses are affected and the impacts are negligible or trivial. Where it is possible that the impacts are more than low, the checklist is required to be forwarded to the Office of Best Practice Regulation (OBPR) for advice on the level of analysis that is required. If the proposal is likely to have medium compliance costs a quantitative assessment of the compliance costs is required to be prepared using the Business Cost Calculator (BCC) or an equivalent approved instrument that assesses all compliance costs in addition to the administrative burden. The full assessment of the compliance cost implications should be documented in a BCC report. For all regulatory proposals that are likely to have a significant impact on business and individuals or the economy, an in-depth analysis documented in a RIA is required. The BCC report forms part of the calculation of the costs in the RIA. The OBPR is the source of guidance on whether a proposal is significant or not and will provide advice to agencies based on its assessment of the nature and magnitude of the problem and the proposal and the scope and scale of impacts on affected parties and the community. Some examples are given by the OBPR to illustrate how it makes its assessment, but the level of impact identified in the Handbook has deliberately been set relatively low to encourage agencies to consult with the OBPR. Because the focus of the Australian government's RIA process is on significant proposals less than 5% of Bills tabled in Parliament and disallowable instruments require a RIS or a BCC report. The number of regulatory proposals requiring further RIA each year varies from 60 to 130, with around five to ten highly significant proposals.

In the **United Kingdom**, proportionality is the key word to understand the level of analysis and resources (including data gathering) that the RIA would require. The principle of proportionality is not used to guide whether or not an impact assessment should be completed for policy approval. It relates only to the scale of effort invested in the analysis required for an impact assessment. The key factors driving this decision should include: a) The level of interest and sensitivity surrounding the policy; b) The degree to which the policy is novel, contentious or irreversible; c) The stage of policy development; d) The scale, duration and distribution of expected impact; e) The level of uncertainty around likely impacts; f) The data available and resources required to gather further data; and g) The time available for policy development. Based on those criteria, there are various levels of analysis which can be carried out:

- Level 1. Description of who will be affected by the proposals. The main groups affected will include business, public sector and consumers.
- Level 2. Full description of the impacts (i.e. positive or negative impacts on any group) and order of magnitude (e.g. low, medium, high).

Box 4.10. **Targeting RIA efforts in OECD countries and classifying types of impacts** (*cont.*)

- Level 3. Quantify the effect (e.g. 1 000 planning applications per year, 100 hours of management time, 500 000 new houses built per year). Put a value on the scale of impacts by monetising the effect. It may be the case that the costs but not the benefits can be monetised. The use of indicators may help further qualify non-monetised costs and benefits.
- Level 4. Monetise fully all costs and benefits.

The scale, duration and distribution of a policy's likely impacts should be one of the key determinants of what level of analysis is proportionate. For low-risk or low-impact interventions, it is unlikely to be proportionate to undertake every level of analysis outlined above unless the data is readily available. By the same token, more data and analysis will be required where the impact is expected to be substantial or fall disproportionately on a specific group.

Source: www.whitehouse.gov/omb/inforeg; OECD (2007), *OECD Reviews of Regulatory Reform: Korea 2007: Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264032064-en; OECD (2010g), *OECD Reviews of Regulatory Reform: Australia 2010: Towards a Seamless National Economy*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264067189-en; and Department of Business, Innovation and Skills (2015), *Better Regulation Framework Manual: Practical Guidance for UK Government Officials*, London, March.

Of particular relevance, due to the specific characteristics of the legislative process in Chile, is to determine if RIA should be applied to laws (primary legislation) and/or secondary regulation. Chile introduces an important number of new laws every year, mostly stemming from the executive. Laws might be general, and secondary regulation would be the appropriate legal instrument for making them implementable. However, laws provide the general framework for intervention, which possibly calls for the assessment of various options and possibilities to solve problems. But preparing RIAs for laws might also require additional technical capacities and stronger efforts of co-ordination, consensus building and agreement among the various interested parties. This might call for stronger consultation mechanisms, which currently are not in place. Thus, opting for RIAs of law drafts would be relevant in the context of Chile, but it might require additional efforts and clear procedures to ensure that they are properly done and contribute to better decisions.

RIA cannot be performed for all regulatory interventions, particularly in countries that are starting to use the tool and where there is a huge production of legal instruments. Several OECD countries have focused on some type of regulations or sectors; for instance, focusing on regulations potentially affecting SMEs. This could be a possible good start in Chile, by refining the current SMEs Statute and then expanding to other areas. The efforts in the Ministry of Environment could also be improved by adding the elements of a RIA system that are currently missing.

Develop and implement data collection strategies. The usefulness of a RIA depends on the quality of the data used to evaluate the impact. Regulators are less accountable for their proposals when an impact assessment is confined to qualitative analysis. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, it is essential that strategies and guidance are developed for ministries if a successful programme of quantitative RIA is to be developed.

Box 4.11. **International experiences regarding the use of RIA for laws: Mexico, Czech Republic and Germany.**

In **Mexico**, the RIA system seems to be very broad. The range of legislative instruments covered by the RIA requirement includes law initiatives at the executive branch (*leyes*), regulations, decrees and presidential agreements, technical standards (NOMs), handbooks, circulars, guidelines, directives, rules and any other general regulation issued by agencies and federal decentralised bodies. The Mexican RIA requirement formally embraces both primary and subordinate regulation. However, according to Article 71 of the Constitution, the President, the two chambers of the federal Congress, and the state legislatures have the right of initiative in relation to primary legislation, while only legislation originated by the President is, in practice, subjected to RIA.

In the **Czech Republic**, RIA is applied to all draft legislative proposals approved in the Government Annual Legislative Plan with the obligation to elaborate RIA, which includes draft laws. The submission to the Annual Legislative Plan is made upon presentation of an "Overview of impacts", i.e. a template sheet filled in by the drafting authorities and submitted by ministers to the government deliberation when they propose new legislative proposals to a Draft Annual Legislative Programme. Overviews of impacts are then evaluated by the RIA Board to confirm or amend the proposals by ministries with regard to the obligation to elaborate RIA. RIAs are required in the case of sizeable impacts or considerable changes in comparison to the current state of play expected by the proposed regulation.

In **Germany**, the Joint Rules of Procedure have made the "assessment of the effects of law" (*Gesetzesfolgenabschätzung*) mandatory for federal ministries. As the term indicates, the procedure applies to all legislative proposals. Some types of secondary regulations and "soft law" are covered to some extent. The guidance requires an analysis that is proportionate to the scope and complexity of the proposal. The main rationale behind the tool was – and still is – informing decision makers and reducing the costs of regulation. The federal government is bound by the Joint Rules of Procedure to examine regulatory impacts and make them transparent in the statement of legislative intent for each draft bill. The Rules define "regulatory impact" as the main impact of a law. This covers both the intended and unintended consequences. According to the 2009 updated version of the Joint Rules of Procedures, the ministries must describe whether the impacts of the proposed legislation meet considerations of sustainable development, including therefore also long-run economic, environmental, and social impacts.

Source: OECD (2014), *OECD Reviews of Regulatory Reform. Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, Paris; Office of the Government of the Czech Republic (2015), "Regulatory Impact Assessment in the Czech Republic", Unit of Co-ordination of RIA Process, ppt presentation; and OECD (2010b), *Better Regulation in Europe: Germany*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264085886-en.

As in other Latin American countries, in Chile there is a limited tradition in the use of data and information to support decision making. In most cases, qualitative explanations inform policy makers without providing sufficient quantitative evidence of policy and regulatory issues. Data collection is therefore a serious challenge in the implementation of a sound RIA system. This can only be overcome if there is a real effort to promote data gathering, if there is an infrastructure to support the use of information and data collection, and if data is used to support decision-making.

Integrate RIA into the policy making process, beginning as early as possible. Integrating RIA into the policy-making process will, over time, ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives, and choosing policy in accordance with its ability to meet objectives become a routine part of policy

development. If RIA is not integrated into policy making, impact assessment becomes simply an *ex post* justification of decisions already taken, and contributes little to improving regulatory quality. Integration is a long-term process, which often implies significant cultural changes within regulatory ministries. Early integration of RIA into the policy process would require stronger incentives and possible sanctions for non-compliance. More importantly, it would require that policy makers are convinced of and request the added value of RIA.

Both the SMEs Statute and the AGIES are tools to improve the preparation of regulatory proposal and, in theory, they need to be presented and discussed with the public. In that sense, both documents should provide relevant information for decision making. However, in practice, the SMEs Statute is seldom conducted before the draft regulation is prepared and the lack of a quality control mechanism makes it difficult to change the flow of how it is prepared, which normally becomes a justification of the regulatory proposal. In addition, in both cases the lack of a sound public consultation process reduces the possibility that they could be improved by integrating comments from stakeholders and therefore improving the regulatory proposal. The AGIES should be prepared, according to article 15 of the Supreme Decree 93 (Environmental Economy Division, 2013), when the draft regulation has already been made.

If Chile is to adopt a RIA system, the adequate flow of the regulatory process should be carefully designed, in order to ensure that RIA contributes effectively to decision-making. Any type of RIA should be conducted and discussed before a decision is made, making transparent the reasons why government intervention decides to go in a certain direction. This implies a change in the administrative culture, which might take time and might be confronted with resistance.

Communicate the results. The assumptions and data used in RIA can be improved if they are tested through public disclosure and consultation. Releasing RIA along with draft regulatory texts as part of the consultation procedure is a powerful way to improve the quality of the information available about new regulations and, in so doing, improve the quality of regulations themselves. Communicating RIAs is also important to correct misperceptions by the public.

The publication of the SMEs Statute and AGIES is compulsory by law. Each institution responsible for elaborating the assessments is obliged to publish the documents on its website, as part of the information that supports the regulatory intervention. However, the lack of a single portal where assessments could be gathered makes it difficult to find all the SMEs Statutes that have been prepared so far and those that are to be prepared. The obligation responds more to the access of information requirement, also imposed by law, than to the need to make the regulatory process transparent and to provide information to the public. The current efforts to compile SMEs Statutes in the portal Regulations SMEs (see section on *centralised registries*) might break this trend, but it will require a continuous up-date to centralise the information and ensure that regulators inform the Ministry of Economy, Development and Tourism when they prepare the SME Statute, which does not take place systematically.

In the case of the SMEs Statute, Article 5 of Law No. 20.416 should make available to the public the form that includes the economic and social impact analysis on SMEs. The Ministry of Economy, Development and Tourism should be also informed about the promulgation of regulation that might affect SMEs. In the case of the Ministry of Environment, the AGIES are available during the draft regulation's preparation phase. Much still needs to be done in order to make the process of impact assessment a transparent one, in which stakeholders are informed on time of the results of the regulatory intervention.

Involve the public extensively. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can constitute cost-effective sources of the data needed to complete high quality RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the degree of acceptance of the proposed regulation by affected parties. The extensive use of other strategies, such as consultation, can be seen as an important means of collecting information and integrating the public's perspectives in the decision-making process. The challenge is to use this information in a structured and critical way, avoiding the promotion of particular stakeholders' interests.

Public consultation is not compulsory in Chile and it is not used systematically within the public administration. This is one of the reasons why existing processes are not always linked to consultation. In particular, the SMEs Statutes have to comply with the obligation to be posted on line for information, but they are not subject to consultation *per se*. On the contrary, the AGIES are posted for consultation in the e-files that the Ministry of Environment prepares for draft regulations.

The consolidation of a RIA system in Chile will depend on the extent to which consultation practices are extended within the public administration. RIA has to go through extensive consultations with stakeholders and potential affected groups in order to have a sound analysis of likely impacts. The use of RIA can then trigger better consultation practices and help regulatory institutions improve their discussions with affected groups.

Apply RIA to existing as well as new regulation. RIA is equally useful in reviewing existing regulation as it is in assessing proposed new regulatory measures. In fact, reviewing existing regulation involves fewer data problems, so the quality of the resulting analysis is potentially higher. Consistently applying RIA to existing regulation is a key priority. Parts of the regulatory structure that are not directly subject to government disciplines should be included in the analysis, such as local government regulations or the actions of independent regulators.

In the current efforts to introduce RIA there is no clear indication if the tool ought to be used for new or existing regulations. It is however important to point to the fact that RIA should be promoted for both types of interventions, and both the SMEs Statute and the AGIES can be adapted for that.

Assessment and recommendations

The government of Chile should develop mandatory standards and guidelines to improve the preparation of laws and regulations for the whole State administration. The establishment of quality standards and the use of guidelines for the development of bills and draft regulations should include forward planning, plain language drafting, disciplines for transparency and accountability, and the preparation of impact assessment. These standards would help policy units and regulators to prepare their regulatory interventions in a more systematic way as well as facilitate a culture that promotes regulatory quality.

Several OECD countries have introduced over time clear regulatory procedures based on standards for transparency and accountability, which helps regulated entities to have a better understanding of the regulatory process, as well as to prepare and implement regulation based on key concepts and criteria. Standards and guidelines should also offer the possibility for the public to have easier access to regulations and engage in a more active way in the rule-making process.

Chile lacks compulsory standards and guidelines to prepare and implement regulations. The current legal instruments, mainly laws at central level, which frame the legislative process in the country, are very general in their statements and criteria, and do not constitute a comprehensive approach that could systematically promote regulatory improvements. The quality control mechanism exerted by SEGPRES within the executive also lacks clear precepts and concepts, which could signal when a draft regulation is failing to achieve minimum quality standards. The quality control is conducted without adequate guidelines that could ensure clear criteria for review and challenge.

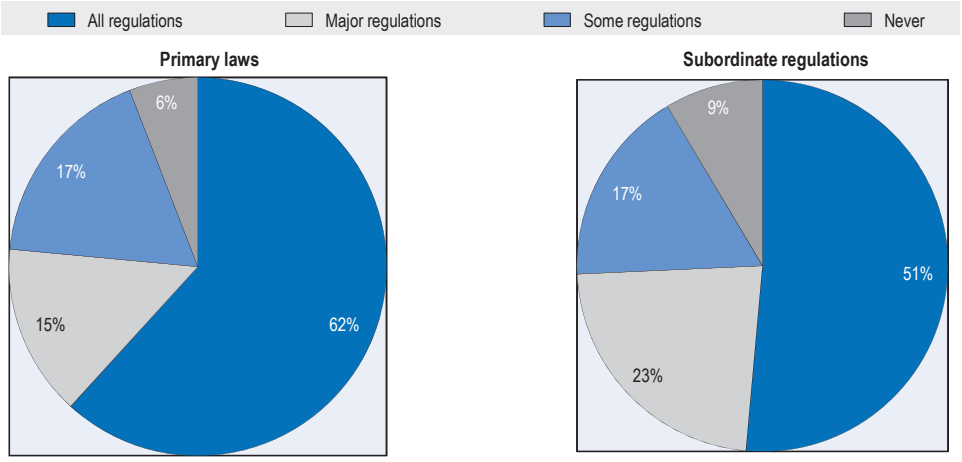
Setting up quality standards and using guidelines could help regulators to prepare their regulatory interventions in a more systematic way, as well as facilitating the creation of a culture that promotes regulatory quality. For regulators it would be easier to comply with them, integrating new practices and standards in their regulatory process. They would see the value of preparing regulations in a more co-ordinated way, taking into consideration concepts that aim at making regulations more transparent, clear for regulated entities and more accessible for the general public.

The government of Chile should introduce compulsory consultation practices, mechanisms and standards to improve the preparation and review of regulations and systematically check for compliance among regulators. These standards could build upon a number of practices already in place in Chile.

Good consultation practices are one of the most positive features of any regulatory system. Regulatory policy as well as regulatory reform projects and individual regulations need to be shaped by users as much as by officials and politicians. For this to happen, users need channels to make their voices heard. They must be able to tell the government what problems they would like to see regulated and what goals regulation should have. If governments want to regain the trust of their societies, they must listen to the how its users perceive regulation.

Regulatory consultation is a widespread practice among OECD member countries. Of OECD countries, 62% have requirements for stakeholder engagement for all draft primary laws, 15% for only major regulations, 17% for some regulations, and only 6% have never had such requirements. The figures for secondary regulations are 51%, 23%, 17%, and 9%, respectively (see Figure 4.1).

Figure 4.1. **Requirement to conduct stakeholder engagement**



Note: Based on data from 34 countries and the European Commission.

Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatoryperformance.htm.

Chile lags behind most OECD countries in ensuring that the public can systematically participate in the regulatory process. Consultation practices vary among regulators, but there is no single authority that ensures whether those consultations really took place and were properly conducted before the regulation was issued. Even if Chile has made improvements in integrating consultation practices in the regulatory process, much has still to be done to ensure that regulated parties have the right channels and mechanisms at their disposal to be consulted during the preparation and review of regulations. Given that SEGPRES is the main co-ordinator of government policies and processes, it should establish mandatory consultation practices and systematically check for compliance among regulators. SEGPRES, as part of its legal control of draft regulations, could review if consultation was formally conducted in the preparation of any regulation. This quality control should evolve further once other tools are introduced, particularly RIA. Once the oversight body for regulatory reform has been formally established, one of its main tasks would be to challenge regulation, not only from the procedural, but also from the content point of view.

Regulators, in addition, need to understand the value of conducting consultation at early stages of the regulatory process, making a cultural and administrative change in the way regulations are prepared and reviewed. In some fields, such as environment, practices have improved, but "public notice and comment" is not compulsory in the preparation of draft regulations, which reduces the possibility for any interested party to have fixed periods of time to formally provide comments to draft regulations. Fixed periods help interested parties organise themselves and ensure their participation is planned accordingly.

Chile should therefore consider making the consultation process compulsory when preparing and reviewing both primary and secondary regulations, before they are adopted. This should offer the possibility for stakeholders to participate systematically in the regulatory process, through public notice and comment for a set period of time, not less than 30 days (even if 90 days is considered good international practice). This consultation technique would ensure that draft regulations are made public and that there is a period of time when regulated entities, consumers, users and citizens in general can express their views on them.

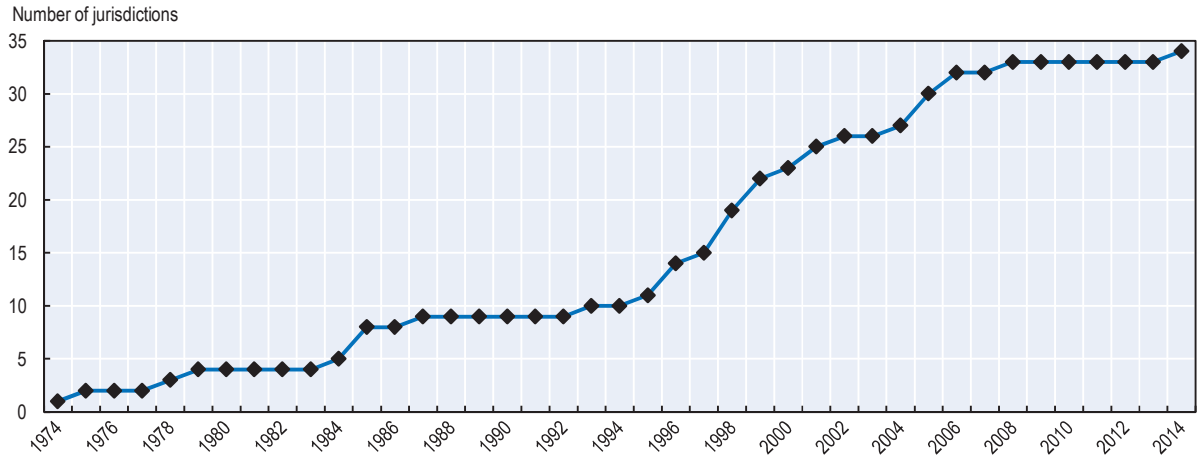
In addition, Chile should also promote the use of other consultation techniques that can contribute to the preparation of draft regulations. Several Chilean regulators conduct such consultations, for instance, setting up working groups or consultative bodies. However, in most cases, these mechanisms are not public and, at the end of the process, there is no evidence on how they were conducted and the results they have achieved. If Chile introduces the use of RIA, those consultation techniques would be needed even more and their inputs more evident for the whole impact assessment process. The promotion of consultation and the use of RIA are two tools that must be developed hand in hand and could gradually make a difference to the quality of interventions the government of Chile uses to solve problems and address regulatory challenges.

The government of Chile should integrate the use of RIA in a co-ordinated and systematic way within the regulatory process, building on existing capacities. Consider the introduction of some threshold test to determine more systematically the legislative proposals to require an in-depth RIA. The preparation of the impact assessment should be initiated early in the decision-making process; before the decision to regulate has been made (also see recommendation below). The preparation of the impact assessment should be used as a tool for collecting feedback from stakeholders (and hence improving proposals and decisions). The oversight body should check the quality of impact assessment, consideration of alternative options for proposed legislation and the scope and extent of stakeholder engagement. This quality check should be mandatory and combined with a challenge function – drafting institutions should be required to revise the draft proposal if necessary.

Most OECD countries have made it compulsory to use RIA in the regulatory process. The *Recommendation of the Council on Regulatory Policy and Governance* advises governments to integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals; to clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals; and to consider means other than regulation and identify the trade-offs of the different approaches analysed to adopt the best one.

RIA was systematically applied in 32 out of 34 member countries in 2012. In fact, the use of RIA by OECD member countries has expanded over the past 30 years as illustrated by the preliminary data from the 2014 Regulatory Management Indicators survey (Figure 4.2).[15]

Figure 4.2 **Trend in RIA adoption across OECD countries**



Note: Based on preliminary data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so are not part of the sample.

Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

In Chile, initial efforts have been made in some policy fields, such as environment or SMEs, motivated by the need to improve decision making with more evidence, e.g. information and data, and to make the regulatory process more participative. Those efforts constitute a valuable initial step that should be extended to and made systematic in the central State administration, ensuring that regulators prepare *ex ante* RIA and there is a quality control mechanism at the centre of government that reviews their quality and gradual upgrade.

Nevertheless, RIA is a tool that has to be properly designed and introduced. It would be advisable for the government of Chile to learn from the current experiences and determine what has been successful so far and what has impeded the comprehensive use of this tool. That process could also help identify what are the key priorities on which a RIA system should rely. RIA should not appear as a bureaucratic formality, but as a process that brings benefits to the regulatory system, providing useful information to those that take regulatory decisions. In that sense, RIA needs to have strong political support and commitment to ensure it is properly used in the regulatory process. This is an important element that has to permeate the institutional design of a RIA system.

Interest groups and parties affected by regulations should also have the possibility of learning from and participating in the RIA process. RIAs can be improved over time if data and information is guaranteed and, in most cases, this requires the involvement of affected parties. Consultation and proper communication are therefore essential components of the RIA system to be designed in Chile.

In addition, any RIA system to be designed in Chile has to include the "challenge function" component, which implies the setting up a co-ordinating unit capable of challenging regulators when they present their RIAs. This is clearly in relation to the way Chile will assign responsibilities for regulatory reform at the centre of government. In most OECD countries, the oversight body for regulatory reform is the one responsible for the challenge function in the RIA system. If that responsibility is assigned to SEGPRES,

this should mean the gradual extension of capacities, from the current legal review they conduct to more evidence-based decision making, which includes the economic perspective of how regulation affects businesses and consumers.

Furthermore, regulators need to feel that RIA brings a benefit in the way they are approaching the regulatory process. For this to happen, constant guidance and training are required, so they improve their capacity to handle analysis, which could be rather simple at the beginning, but should become more complex as know-how develops. Regulators should be encouraged to use their technical expertise in providing evidence to solve problems, and this would require supporting them in valuing the role of RIA in the preparation of interventions. The government of Chile should also be clear on the methodological approach to RIA, ensuring that there is flexibility in the methodologies used to conduct RIAs. Engaging in courses, training and workshops to learn about RIA processes and methodologies is fundamental to achieve sustainability in the use of the tool. Capacity building within the administration should be a strong component of any attempt to introduce and use RIA in Chile.

Chile should promote the use of alternatives to regulation. The identification of the policy problem and the consideration of meaningful alternative solutions should be performed early in the decision making process. Impact assessment statements should include justification that a regulatory solution is the most suitable option and that the problem cannot be addressed through non-legislative intervention. Compliance with this condition should be monitored and enforced by the oversight body.

As in most Latin American countries, the legalistic approach to regulatory interventions leaves little room for the use of alternatives to intervene and solve problems. Chile is not exempt from this situation, and regulations generally appear as the only possible way to intervene. Regulators are required to prepare laws and regulations instead of conducting *ex ante* analysis to determine the best alternative to solve a problem.

There is scope for Chile to explore the use of alternatives in various regulatory and policy fields. Chile has good regulatory institutional practices that bring certainty and predictability to the market. Encouraging trust in the market could also be a way to promote interventions where other non-regulatory options are assessed. The introduction of RIA would also help in promoting the use of alternatives, as it would show the feasibility to solve problems through non-regulatory means.

Notes

1. www.aduana.cl/historico-publicacion-anticipada-2014/aduana/2014-04-07/091317.html
2. Informes Estadísticos de Solicitudes, años 2009 al 2014, Comisión de Probidad y Transparencia, MINSEGPRES.
3. Gobierno de Chile (2014), www.dipres.gob.cl/594/articles-87929_Criterios.pdf.
4. Government Instruction No. 7 of August 2014 replaced Government Instruction No. 2 of April 2011.
5. Decree 66 that approves the regulation that regulates the procedure of consultation with indigenous groups according to Article 6 No. 1 letter A) and No. 2 of Convention No. 169 of the International Labour Organization.
6. Decree No. 77 includes the Regulation on the execution of Title I of Law No. 19.912 and the requirements to prepare, adopt and implement technical regulations and procedures related to conformity assessment.
7. Law No. 10.336, Article 154.
8. Law No. 10.336, Article 10.
9. Resolution 1600/2008.
10. Law No. 18.695, Article 53.
11. Law No. 20.285, Article 43.
12. Law No. 10.336, Article 10.
13. The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the systematic role of RIA in ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments integrate RIA into the development, review, and reform of regulations. In 1997 the OECD published a list of ten best practices in *Regulatory Impact Analysis: Best Practices in OECD Countries*.
14. DS No. 93/95.
15. Preliminary data from the 2014 OECD Regulatory Management Indicators survey.

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Chapter 5

Reviewing the management of Chile's existing regulations

This chapter discusses the different practices towards managing and rationalising regulations. It shows how even though Chile has not undergone a comprehensive review of regulations and formalities, there have been some efforts to manage the regulatory stock through some projects and programmes. The different techniques that can be used to manage regulations include the Citizen's Office, Business Desk, Chile Atiende, Chile without red tape, and Chile Click; some of which are part of the Agenda for Productivity, Innovation and Growth. Finally, the chapter also describes the use and implementation of administrative simplification initiatives, centralised registries and one-stop shops by the Chilean government and sets out examples of implementation in other OECD countries.

High quality regulation that was relevant at one point in time may become outdated as circumstances change. Periodic evaluations and reviews are needed to assess the impact of regulations and whether the desired outcomes are being accomplished. Reviews also introduce a measure of accountability on regulatory policy. Consequently, the 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* advises governments to "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 delivers the intended policy objectives".

Regulatory reviews are a complement to *ex ante* regulatory controls, as the former corrects problems and the latter avoids them. Hence, reviewing the regulatory stock is particularly important in Chile, where there is currently no *ex ante* regulatory assessment generally applied to the flow of regulation. Whenever there is a lack of *ex ante* control, a common reaction among public servants to address a public policy problem is to regulate. The consequence is an extended and overly burdensome stock of regulations hindering entrepreneurship and innovation.

The large stock of regulations and administrative formalities accumulated over time require regular reviews and updates to eliminate what is no longer relevant and, whenever possible, to simplify regulatory requirements (see Box 5.1). Approaches to regulatory reviews vary from generalised reviews and "guillotines" to sunsetting and automatic review clauses. The OECD has found that in many cases regulatory institutions have substantial discretion to conduct reviews in the absence of standardised evaluation techniques and criteria. When this happens, reviews become an *ad hoc* and unstructured practice that focuses only on marginal changes to complex regulatory structures (OECD, 2002, p. 35).

Once a review has been conducted, there is a need to eliminate or simplify regulatory requirements. Here again, techniques may vary, but the use of ICT and the deployment of digital government are of increasing importance as a tool for administrative simplification.

Box 5.1. **EU Regulatory Fitness and Performance (REFIT)**

The EU Commission initiated a Regulatory Fitness and Performance Programme (REFIT) in December 2012. REFIT is the expression of the Commission's ongoing commitment to a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens. REFIT is a programme to review the entire stock of EU legislation – to identify burdens, inconsistencies, gaps or ineffective measures and to make the necessary proposals to follow up on the findings of the review.

In the framework of REFIT the Commission has set out an ambitious agenda. It identified areas where initiatives foreseen would not be taken forward. It withdrew a number of proposals that had been long blocked in the legislature and repealed a number of pieces of legislation. In total, over 100 actions were identified, half of which were new proposals aimed to simplify and reduce regulatory burden in existing legislation. The other actions are Fitness Checks and evaluations designed to assess the efficiency and effectiveness of EU regulation and prepare future burden reduction initiatives.

Box 5.1. **EU Regulatory Fitness and Performance (REFIT)** (*cont.*)

Some of the outcomes of REFIT by mid-2014 are the following:

- The Commission formally approved 53 withdrawals of pending proposals after consultation of Parliament and Council, including all nine REFIT initiatives, including those on simplification of VAT obligations, the statute of a European private company and on the protection of soil.
- Work has started on the Fitness Checks in the legislative areas of waste, the protection of birds and habitats, passenger ship safety and the General Food Law. They will provide the basis for further initiatives for simplification and regulatory burden reduction in the respective areas, including the reduction and streamlining of reporting obligations.
- The Commission applies the Think Small First principle and has also taken action to apply lighter regimes for SMEs and exemptions for micro-companies wherever appropriate. Seventeen REFIT actions in the scoreboard contain exemptions for micro-companies and lighter regimes for SMEs. In addition, fees for micro-companies for registration and authorisation were reduced in the areas of chemicals, health and consumer protection.
- Additional initiatives are being taken to better use the Internet to simplify and improve the implementation of regulatory requirements to the benefit of administrations, businesses and consumers alike. Building on the experience with energy labelling which is now uniformly presented in online sales a similar approach is being explored in the field of food information to consumers.

Source: European Commission (2014), "Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook", COM(2014) 368 final, Brussels.

Reviews of the stock of regulations and formalities

Different techniques can be used to keep regulations up to date (see Box 5.2). OECD countries have been using them over time, ensuring that regulations meet their intended objectives and are promptly reviewed.

Box 5.2. **Approaches to regulatory reviews**

International experience illustrates several approaches to undertake regulatory reviews:

- Scrap and Build: It consists of a comprehensive review and rebuilding of entire regulatory regimes, prioritising specific sectors and taking into account the interactions of multiple regulations. The advantages of this method include benefits appearing faster, affected parties having more warning of the need to adapt, vested interests having less opportunity to block change, and reforms having high political profile. The disadvantages are that this method is costly, time-consuming, and may not be feasible where the resources and expertise are limited.
- Generalised Reviews: They are policies that instruct regulatory bodies to review the entire structure of their regulations against general criteria such as need and efficiency. This kind of review has a broad scope (*i.e.* the entire stock of regulations with business impacts). A variant of this kind of review is the "guillotine", which nullifies regulations that are not registered after a certain date. However, these reviews have been weakened by exemptions excluding burdensome regulations, lack of priorities, fragmentation, and lack of depth and rigor.

Box 5.2. **Approaches to regulatory reviews** (*cont.*)

- Sunsetting and Automatic Review Clauses: This technique consists of setting an automatic expiry date for new laws and regulations upon adoption. Regulations subject to sunsetting can only extend their effect if they are remade through standard rule making procedures. This kind of review reduces the average age of the regulatory stock and ensures periodic reform of the regulatory stock. Its disadvantages include reducing the predictability of the regulatory environment. Furthermore, sunsetting will not tackle the existing stock of regulation as it only focuses on individual measures and does not challenge whole areas of regulation in need of review.
- Mandated or Automatic Review Processes: This method consists on systematic reviews of existing regulations. They are grouped according to their age and progressively reviewed against quality criteria, which gradually brings the regulatory stock into conformance with those standards. Unlike sunsetting, regulations continue in force unless actions are taken to eliminate them. The obvious disadvantage is that since positive action is required, vested interests may organise to defend the status quo.
- Variance Processes or Equivalence of Performance Tests: This technique allows businesses to apply lower-cost compliance methods as long as they are equally effective as an existing regulation. It combines the logic of performance-based regulation with the ability to advance the innovative skills of business to come up with more efficient regulatory processes.

Source: OECD (2002), *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264177437-en, pp. 35-39.

Chile has not undergone a comprehensive review of regulations and formalities, but there have been some efforts to manage the regulatory stock through some projects and programmes to be presented in the next sections. For a country like Chile, whose legal origins lie in civil law, it is important to conduct regular regulatory reviews, as there is a tendency to produce regulations and in most cases without ensuring that previous legal frameworks are repealed or streamlined. For example, between 2005 and 2009, 416 laws were published in the Official Gazette, but there is no clear information on the number of laws repealed in the same period of time. The current number of valid laws is unknown and the complexity of secondary regulation is even greater, which makes it difficult to know the exact number of regulations in place.

Centralised registries

Centralised registries are tools frequently used by OECD countries to advance regulatory transparency (see Box 5.3). Efforts to count and register regulations accomplish more than regulatory transparency; they are also useful management and oversight tools. Registering the number of regulations creates a sense of responsibility and discipline by making apparent the size and scope of the regulatory system and its rate of growth. It also assists co-ordination of the efforts of different regulatory authorities by ensuring a better and more systematic flow of information within the public administration. This reduces the risk of overlapping and inconsistent regulation. Establishing a central registry also assists governments in making one-stop shops available to businesses. A centralised business registry with positive security seems to offer substantial benefits, both domestic and international, in reducing barriers to entry and competition.

Box 5.3. **The case of France: Légifrance**

The Légifrance site (www.légifrance.gouv.fr), governed by decree No. 2002-1064 of 7 August 2002, displays all public law that is accessible on line in France. It replaced the Jurifrance website introduced in January 1998, which charged for access to its main data (the Official Gazette, legal codes and main laws). Légifrance differs from it in covering a far broader range of information with free access.

The Légifrance website is placed under the authority of the prime minister's office. In managing this public service, the prime minister relies on the Committee of the Public Service for the Transmission of Law over the Internet, whose members include representatives of businesses specialising in the field of legal publishing. The annual report of this Committee is available on the Légifrance website.

The main features of Légifrance are as follows:

- It makes available to the public free of charge most prescriptive acts in force (the Constitution, codes, laws, regulatory acts issued by the state authorities, and acts that stem from France's international commitments, including directives and regulations published in the Official Journal of the European Union), set out in the form resulting from their successive amendments. Around a dozen codes are available in English and Spanish. The website also provides access to collective labour agreements in force and to the official bulletins of ministries.
- It provides access to several foundations of case law, be this constitutional, judicial, administrative or European case law; website users can subscribe daily free of charge to an electronic version of the Official Gazette of the French Republic via email messaging.
- The website provides information on the production of legal norms: "Guide for Drafting Legislation and Regulations", monitoring of the application of laws, statistics on the production of laws, orders and decrees.
- The design of the website has relied on associating databases organised as far as possible with a view to providing for easy searches on Légifrance; the site also serves as a portal to other authoritative public websites, such as those of the parliamentary chambers, and includes private judicial website references.

Licenses to reuse the material contained in the public websites are awarded free of charge to people who wish to make use of these data as part of their work, whether it is commercial or not.

Source: OECD (2010a), *Better Regulation in Europe: France*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264086968-en.

In Chile, the registry www.leychile.cl is a free legal database of the Library of Congress that offers information on more than 245 000 legal instruments. It includes information on the Constitution, codes of the Republic, laws, law decrees, decrees with the force of law, supreme decrees, resolutions, municipal ordinances and judicial agreements. It offers the various versions of the legal instruments that have been modified and their consolidation process, as it includes the modifications, concordance, consolidated texts and the regulations derived from all laws. In addition, the inventory offers information since 2007 on the history of the law from which the legal instrument, history of laws that modify other laws, history of the law by article, law proposals that are discussed in the National Congress, administrative jurisprudence of the Comptroller General of the Republic and jurisprudence of the Constitutional Court on its work on the constitutionality of the law.

The Ministry of Economy, Development and Tourism has recently launched a website that includes a compilation of regulations that affect SMEs: Regulations SMEs (*Regulaciones MIPYME*) (www.regulacionesmipyme.cl). The website also offers the possibility of getting access to draft regulations and the SMEs Statute that should be prepared by the responsible regulator. In addition, it also contains details of 1850 norms that are likely to affect SMEs, which will be updated on a regular basis, following regulations published in the Official Gazette.

Chile has developed a centralised register in the form of an Integrated Platform of State Electronic Services (*Plataforma Integrada de Servicios Electrónicos del Estado*, PISEE) (http://2011-2014.modernizacion.gob.cl/interoperabilidad). PISEE is managed by SEGPRES through the State Modernisation and E-Government Unit, in order to improve interaction with citizens and avoid duplication of information requests by Chilean authorities.

PISEE was included in the Digital Agenda of Chile 2004-2006, which comprised a series of measures to introduce and improve digital government initiatives to facilitate transactions between the State and citizens. One of those initiatives, No. 11, integrated the setting up of a cross-cutting platform with interoperability in order to share non-reserved information among government institutions. This avoids duplicating requests for information from businesses, for instance, birth certificates.

In the first phase of the Project, called "Widespread Increase of the Platform" a plan was developed to identify the entities that provide cross-cutting data to all State institutions and those in charge of formalities with a substantial impact. For instance, institutions such as the Internal Revenue Service, the Civil Register Service, the General Treasury of the Republic, the Ministry of Housing and Urbanism, and the Social Pension Institute, were the first ones to sign multilateral agreements to implement the use of PISEE.

After several years of implementation between 2009 and 2014, PISEE has integrated 55 institutions[1] that offer 87 information services and contribute to carrying out 379 formalities. Since 2012, through the campaign Chile without Red Tape (*Chile sin Papeleo*), new needs, institutions, formalities and services were identified. The inclusion of the Transparency Council and the Transparency website brought in more institutions. PISEE helps in carrying out about two million transactions, requests or consultations monthly.

There are still more challenges to make PISEE a more useful tool. In particular, not all institutions of the Chilean administration are part of the platform; there is a need to include municipalities and their formalities, fully identify all processes within institutions that might be subject to interoperability, and elaborate a new regulatory framework for interoperability within the State. Last but not least, Chapter 11 of this review highlights how a higher uptake of PISEE across the administration is an important precondition to capture its potential for simplifying the administration and improving service delivery.

1. For a full list of participating institutions in PISEE: http://2011-2014.modernizacion.gob.cl/interoperabilidad/plataforma-de-integracion-pisee/instituciones-en-la-pisee

Administrative simplification initiatives

Administrative simplification has been an active field in many OECD countries. Administrative simplification is a regulatory quality tool to review and streamline administrative regulation: paperwork and formalities through which governments collect information and intervene in economic decisions. It has remained high on the agenda in most OECD countries over the last decade. Efforts to reduce administrative burdens have primarily been driven by ambitions to improve the cost-efficiency of administrative regulations, as these impose direct and indirect costs on regulated subjects. Administrative simplification requires linking up *ex ante* assessment of regulations and their *ex pos*t review, but this is difficult to make operational. Burdens therefore increase, more by accident than by design. This is why the issue of burden reduction cannot be isolated from overall considerations of regulatory quality management.

Some countries have decided to use more qualitative techniques, either as a complement to the existing quantitative ones or to replace them. Qualitative techniques do not try to express administrative burdens in measurable terms but rather work with information that may be subjective and is not quantifiable, but may still represent useful input for simplification efforts. A subset of qualitative techniques consists of perception studies. Perception surveys, for example, are used to identify and sometimes measure irritation costs (see Box 5.4).

Box 5.4. **Good international practices on focusing simplification efforts using quantitative and qualitative techniques**

Mexico has recently adopted the Standard Cost Model, which brought a renewed impetus across the federal government to reduce administrative burdens generated by formalities. Mexico invested reasonable resources in producing a baseline measurement of administrative burdens by embarking in the collection of data from around 500 interviews, and using a combination of statistical and mathematical techniques and internal assessments to extrapolate the data to estimate burdens. Following international practices, Mexico set the objective of reducing 25% of administrative burdens as part of the regulatory improvement programmes for the years 2011-2012 submitted by line ministries and agencies of the federal government.

In 2007, the **Danish** government initiated the *Burden Hunters Project*. This was the first step in the development of a more systematic approach towards the reduction of irritation burdens. Staff from the Danish Commerce and Companies Agency (DCCA) and representatives of line ministries visited businesses to get concrete and specific knowledge about how they experience interactions with government authorities and services provided. The Danish government presented an action plan containing 105 measures to reduce administrative burdens on public sector service providers expected to free up three million working hours annually for service provision.

In the **Netherlands**, the perception of businesses towards regulatory burdens reduction is measured yearly as part of an initiative called *Business Sentiment Monitor*. It does not only focus on the reduction of administrative burdens, but also includes costs to comply with regulations, requirements of supervisory bodies, and the constantly changing rules. The Netherlands aims at increasing the number of businesses that claim they have very little irritation from unnecessary information obligations by 25%

Source: OECD (2014), *OECD Reviews of Regulatory Reform. Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264203389-en; OECD (2010b), *Better Regulation in Europe: Denmark*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084551-en; and OECD (2010c), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010*, Cutting Red Tape, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264089754-en.

There is no single cross-cutting administrative simplification strategy in Chile although SEGPRES, through the State Modernisation and E-Government Unit, has taken the lead in introducing a number of digitisation and digital government programmes, in particular as part of the efforts to digitise activities in the State administration and also to promote digital government across the central administration, in addition to assisting municipalities to digitise formalities.

In the last few years, several initiatives have been introduced to simplify and streamline not only procedures affecting businesses, particularly SMEs, but also for citizens (see also Chapter 11). The 2010 Agenda to Support Competitiveness recognised the need to simplify and streamline business regulations, and included an inventory of those formalities that were costly and time consuming for businesses. Law No. 20.494, introduced in 2011 by the Ministry of Economy, Development and Tourism, tried to facilitate business start-ups. At some point, the Ministry of Economy, Development and Tourism also had a Competitiveness Unit that tried to simplify and streamline formalities for businesses and promote competition policy.

The current *Agenda for Productivity, Innovation and Growth* has raised the need to focus on the use of ICT for innovation, entrepreneurship and growth. A series of measures within the Agenda cover topics that are related to digital government and administrative simplification efforts:

- Measure 22 proposes the creation of an e-system on guarantees.
- Measure 31 proposes the creation of a public innovation laboratory to support projects that solve problems in the public sector in order to provide better services to citizens.
- Measure 34 sets up a new platform, Citizen´s Office, which will allow citizens to initiate and complete the main government formalities, including easy and quick access to available services and benefits.
- Measure 35 proposes setting up a new platform, Business Desk, which will gradually integrate all information on business formalities and services for SMEs.
- Measure 36 will create a unit for managing ICT and digital government. This unit will co-ordinate all efforts in terms of services and delivery that both the Ministry of Economy, Development and Tourism and SEGPRES have been running so far.
- Measure 37 will facilitate the implementation of a technological platform for the National Institute of Industrial Property (*Instituto Nacional de Propiedad Industrial*, INAPI) to facilitate entrepreneurship and innovation.
- Measure 38 will modernise services offered by notaries, improving public registers and records.

The Citizen´s Office (*Escritorio Ciudadano*) and the Business Desk (*Escritorio Empresa*) constitute important attempts to offer both citizens and businesses the possibility of having direct transactions with government institutions, including services and benefits, in addition to creating single data repositories that should facilitate carrying out formalities by using a single portal where all interactions possible will be concentrated. The government of Chile is using existing platforms, such as *Chile Atiende* (see also Chapter 11) to develop the platform, but a lot more is needed to make the desks interoperational. Moreover, as highlighted in Chapter 11, if properly implemented, these initiatives hold the potential to link different agendas creating important synergies and

amplifying their impact, i.e. digital government, service delivery and administrative simplification agendas. For this to happen, a good governance of the initiatives ensuring efficient actors' co-ordination and the strategic alignment of the different agendas needs to be secured.

None of these initiatives has included a measurement of administrative costs or burdens on citizens and businesses. Most of them have been launched as part of the last governments' digital agendas, but not as a co-ordinated and comprehensive effort strategically linked to regulatory reform. Some of the most distinctive programmes and initiatives to simplify formalities are shown in the following sections.

Chile Atiende and Chile sin Papeleo

Chile Atiende (Chile At Your Service) aims to provide services through different channels. It includes a physical channel, with a network of more than 200 offices in Chile – offering 14 integrated public services, and more than 90 formalities - in addition to a website (www.chileatiende.cl) with information on more than 2 480 formalities and a call centre, as well as social media presence (see also Chapter 11).

The initial efforts of this project were made through the initiative *ChileClic* (Chile Click), which included information on more than 1 500 files including services and formalities, social benefits and government programmes. These are based on a network of more than 150 public and private institutions that shared their information, being responsible for the content of what is advertised and offered.

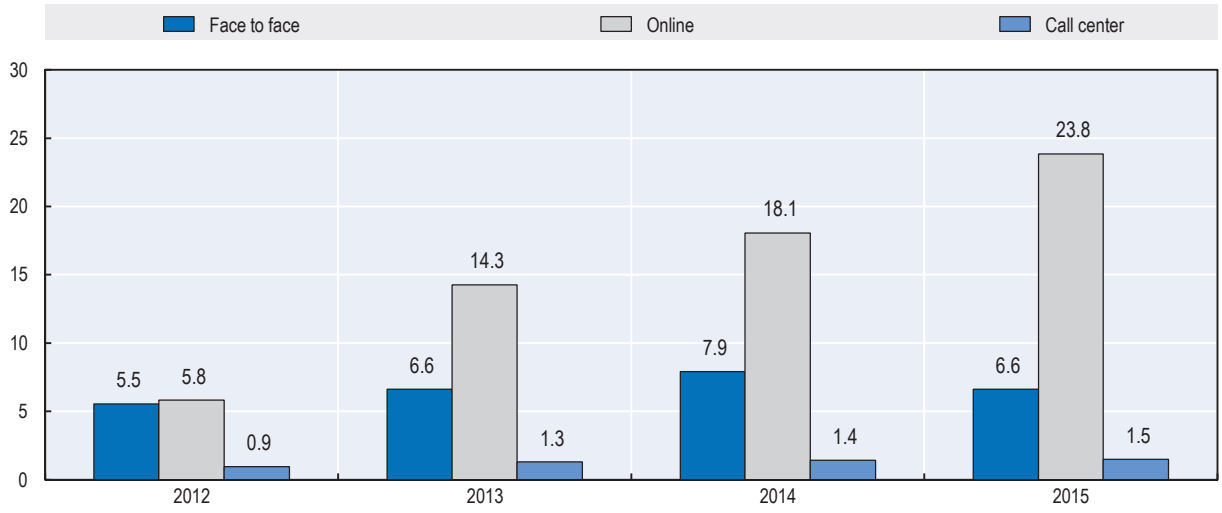
Each information file contains the following data: description of the formality, beneficiaries (including requirements to be fulfilled), documents required, procedures to access or request the benefits or the service (step by step), cost (it might be free of charge or be payable), duration, turnaround time (how long it takes to finalise the formality or obtain the benefit) and legal framework.

Chile Atiende has seen an increased number of requests in all the types of solutions it offers for citizens. Figure 5.1 shows the number of requests that have been received in recent years.

In August 2012, a Presidential Instructive Note was issued to rationalise, simplify and digitise public formalities, especially those affecting citizen´s lives and those that facilitate the development of businesses and productive activities supporting Chile´s growth. This was the legal basis of "Chile without Red Tape" (*Chile sin Papeleo*), available at www.chilesinpapeleo.cl, which includes a list of formalities that can be carried out on-line, as well as citizens´ requests and ideas to eliminate or streamline specific formalities. The website collects information provided by citizens on formalities and the suggestions for improvement. It also refers to the *Chile Atiende* website, where a full description of the formality can be found.

Figure 5.1. **Number of requests in *Chile Atiende* by channels**

In million



Source: *Chile Atiende* website, www.chileatiende.cl, accessed in February 2015.

One-stop shops for businesses

Chile has set up various one-stop shops for businesses. Not all of them have been established through a systematic approach to regulatory improvement, but they have contributed to streamlining the information provided to businesses and citizens. A list of the most relevant ones is presented below:

- SICEX (www.sicexchile.cl) is the one-stop shop for requirements to conduct all activities related with foreign trade, namely export and import. It was created by Supreme Decree No. 1049, D.O. 05/11/2010 by the Ministry of Finance. It has achieved the interoperability of eight institutions, among them the National Customs Service, the Agriculture and Livestock Service, and the Institute of Public Health. The project considers the design, development, and implementation of foreign-trade operations and is divided into three modules: export, import and transit. Excluded from the scope of the project are all the operations or processes not explicitly considered in the contracts, decrees or founding documents and any others that are not directly related to the scope of SICEX, such as those regarding the provision of human and financial resources by private agencies.
- *Registro Empresas* (www.registroempresas.cl) is an electronic registry created by Law No. 20.659 in May 2013. It constitutes the Single Register of Enterprises and Societies, creating a simplified regime to start up, modify, transform, divide, merge and dissolve businesses. The register is free of charge, public, and is administered by the Ministry of Economy, Development and Tourism. It allows businesses to set up an enterprise immediately, in the case where the entrepreneur has an advanced electronic signature or by visiting a notary who will be appointed by the system. The Register has grown over time and it covers now around 90% of all type of companies set up in Chile. In 2014 around 62% of all companies in Chile used the Single Register.

- *Agro Atiende* (www.agroatiende.cl), established in February 2013, is a one-stop shop for farmers who need support tools to improve agribusinesses. It is maintained by the Ministry of Agriculture, and contains all programmes and services provided by the ministry and other institutions supporting agribusinesses.
- SEIA (www.sea.gob.cl) or *Sistema de Evaluación de Impacto Ambiental* (Environmental Impact Evaluation System) is a tool to introduce an environmental perspective in the design and execution of investment projects and activities, helping to assess and certify that such activities, both public and private, meet the legal environmental standards and criteria. SEIA was set up in 1997 and, since then, has helped to have more than 10 000 projects and activities approved that enabled environmental impacts to be identified, prevented and mitigated. SEIA also offers the possibility for on-line participation in public consultation processes related to the projects that being assessed.
- *Chile Atiende PyMES* (www.chileatiende.cl/empresas) is a website that offers information for SMEs. It includes all institutions that are related to the entrepreneurship and competitiveness of SMEs, providing information on their services, and also the programmes that are more suitable for the type of economic activity. It was originally planned that this portal would be integrated into the To Do Business programme (*Para Emprender*) that provided information on the instruments that the Chilean State offered entrepreneurs as support. Chile Atiende PyMES contains information on more than 870 services and formalities affecting SMEs, and the website directs the enterprise to the website of whatever institution is in charge of the formality.

Assessment and recommendations

The government of Chile should consolidate the repositories of primary and secondary regulations, and conduct reviews of regulations in order to streamline and simplify the current legal stock. The creation of an inventory of regulations could provide the basis for simplification of the administrative stock. It would serve as a baseline for reviews of existing regulations to ensure that they are up-to-date.

Today, Chile has made good progress in making laws and decrees available to the public, even if the stock of secondary regulations remains a more difficult area where information still needs to be consolidated. This is why the current repositories of primary and secondary regulations should be strengthened and upgraded. For instance, *Ley Chile* could have legal security in order to ensure that all parties, regulators and regulated entities benefit from a single repository that contains those legally binding regulations in force in Chile. This would increase certainty in the system.

This would also allow the government of Chile to have an inventory of regulations that could provide a basis for further simplification and streamlining. There are some options once the inventory is complete and accurate: first, it is possible to conduct reviews of existing regulations (by sector, by type of regulatory instrument, by criteria, etc.) to ensure that regulations are up-to-date and second, it would be easier to identify regulations whose procedures could be subject to administrative simplification measures (see next recommendation).

In relation to the stock of regulations, Chile has not yet undertaken a comprehensive review and it does not make systematic use of legal techniques to ensure that the current regulatory stock is up to date. This means that there might be outdated regulations still valid, even if they are no longer in force. Codification, consolidation and recasting are legal techniques that the executive and the legislative could use in order to maintain the stock of regulations properly organised and updated. This would help to identify outdated regulations, to repeal them systematically and define priority areas where regulatory reviews of the stock could be undertaken, having a strategic approach to ensure that regulations meet their intended objectives.

However, this type of exercise requires political commitment and support at the highest level. Regulators are expected to organise all the stock they have in their books and then ask themselves if those regulations are currently meeting the intended objectives and achieving the outcomes they would like to have, according to certain criteria established by the organising body responsible for the review. Streamlining and eliminating those regulations should then be done with care and ensuring that there is clear communication with affected parties. Transparency is essential in this process, as regulated groups need to be involved and properly informed.

The government of Chile should expand its current efforts to engage in a cross-cutting administrative simplification strategy, focusing on high-impact regulations and formalities, assessing their costs and supporting their simplification and streamlining.

In many OECD countries (e.g., Denmark, Netherlands, United Kingdom, etc.) administrative simplification has evolved into a comprehensive package of tools and measures that help to reduce costs for businesses and citizens. Many OECD countries have engaged in broad national programmes to measure administrative burdens related to regulation and formalities. Such efforts, which are quite resource-intensive, are currently being evaluated to assess their value for money. Chile could learn from those practices to design a strategy to quantify the administrative cost of regulation, to target the simplification efforts adequately, ensuring that the effort is worthwhile.

Today, Chile has made progress in the front office, by digitising information and making it available to citizens and businesses, but there have not been enough results in the streamlining and simplification of the back office. Several initiatives have been conducted in Chile to centralise an inventory of formalities for businesses and citizens, but they have not been accompanied by mapping the procedures associated with them, which could then lay down the basis to identify the key bottlenecks and constraints that could lead to simplification measures. None of them has had a cross-cutting character in the State administration to promote administrative simplification, nor has it resulted in measurement that could indicate a clear reduction of the burdens on those affected by regulations and formalities. The Citizen´s Office and the Business Desk could only be fully functional if they are the result of a serious simplification effort, which entails the review of the regulations that lay down the legal basis of formalities.

In terms of regulations affecting businesses, the Ministry of Economy, Development and Tourism should take the lead in undertaking a broad programme of administrative simplification affecting the private sector. The current administrative simplification efforts need to be upgraded not only by making use of ICT, but by establishing strategic targets to help the government of Chile define what it wants to focus on and then conduct

a measurement of compliance costs to set a baseline for simplification. This should include reviewing not only the administrative procedures associated with the formalities, but also the legal basis of formalities and assessing their pertinence and need. Regulators need to be asked if the procedure is worth having and what are the benefits they represent for society. It is time to ensure that all e-government efforts conducted within the State administration start producing results together with less burdensome and time-consuming activities for businesses.

The multiplicity of one-stop shops to facilitate business can only have a positive impact on economic activity if they are properly integrated into major efforts for administrative simplification and regulatory reform. Technology can certainly facilitate and ease transactions, but it should be used to guide the promotion of good regulatory practices, more transparent engagement between the government and the regulated and to support more accountable mechanisms when delivering results. This is why the challenge for the government of Chile is to ensure that all current initiatives to make doing business easier can translate into more economic activity thereby creating jobs, growth and development.

The government of Chile should ensure better co-ordination of digital government projects with efforts at administrative simplification. The digital government initiatives should be co-ordinated by one body and summarised in one government-wide policy. Interoperability and inter-connectivity of all information systems and portals must be ensured. Projects in the areas of digital government and administrative simplification should be interlinked (ideally part of one wider policy) and thoroughly consulted. No digitisation of public services and/or administrative procedures should be carried out without prior assessment of options for their simplification.

A number of digital government initiatives are in place in Chile, and important improvements have been done in making it easier for businesses and citizens to interact with the administration. But these efforts have not always been co-ordinated in a centralised manner and ensuring that clear simplification interventions are the basis of their implementation. Digitisation seems to be the main objective and means to achieve easier procedures, but this might not be enough to ensure that the regulatory framework and administrative procedures are simplified.

The integration of ICT has helped to ease procedures and transactions, but they have not always responded to clear legal and procedural simplification requirements. It is important that Chile conducts simplification efforts as a first step, in order to ensure sustainability in the process. The review of the stock, from the legal and administrative point of view, implies changing the basis of regulations in order to meet intended objectives.

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Chapter 6

Considering regulatory compliance, enforcement and appeals in Chile

To achieve its intended objective, a regulation must be complied with. This chapter looks into compliance and enforcement mechanisms. It offers and approach to regulatory enforcement and compliance, seeing that a crucial performance indicator for any regulation is the degree of compliance it generates. It takes into account the use of risk-based approaches for the design and implementation off regulations to be introduced gradually in the Chilean government. Furthermore, it touches upon the justification of having an appeal mechanism that allows for the redress of regulatory abuse by regulators in Chile.

To achieve its intended objective, a regulation must be complied with. A mechanism for the redress of regulatory abuse by regulators should also be in place as a democratic safeguard in a rule-based society and as a feedback mechanism to improve regulations.

Approaches to regulatory enforcement and compliance

A crucial performance indicator for any regulation is the degree of compliance it generates. An *ex ante* assessment of compliance is increasingly part of the regulatory process in OECD countries, although the level of resources and attention focused on it varies significantly.

Box 6.1. **The Table of Eleven in the Netherlands**

The **Netherlands** has engaged in pioneering work to ensure that compliance and enforcement are considered at the start of the rule-making process. Efforts by the Ministry of Justice to raise awareness go back over two decades, via the Directives on Legislation, the legal quality criteria that it applies, and the Practicability and Enforcement Impact Assessment that it also undertakes. The Netherlands developed the so-called "Table of Eleven" determinants of compliance, which have widely influenced other countries' efforts in this field.

The Inspectorate of Law, now called the Expert Centre on the Administration of Justice and Law Enforcement, within the Ministry of Justice, acts as consultant to ministries on issues of enforcement in relation to regulatory proposals. The Expert Centre regards enforceability assessment as essentially probabilistic, recognising that there is significant uncertainty. It aims to identify the two or three key "risk factors" for compliance/enforcement in relation to each regulatory proposal to enable policy makers to address these issues in advance. The review is made as consistent as possible through adoption of standard checklists and other instruments. A key tool is the "Table of Eleven" determinants of compliance.

The Table of Eleven was developed jointly by the Ministry of Justice and Erasmus University and derives from academic literature in the areas of social psychology, sociology and criminology, supplemented by the ministry's practical experiences and viewpoints on law enforcement. The table is divided in three parts:

- Spontaneous compliance dimensions. These are factors that affect the incidence of voluntary compliance - that is, compliance that would occur in the absence of enforcement. They include the level of knowledge and understanding of the rules, the benefits and costs of complying, the level of acceptance of the "reasonableness" of regulations, general attitudes to compliance by the target group and "informal control", and the possibility of non-compliance being sanctioned by non-government actors.

- Control dimensions. This group of factors determines the probability of detection of non-complying behavior. The probability of detection is directly related to the level of compliance. The factors considered are the probability of third parties revealing non-compliance, the probability of inspection by government officials, the probability of inspection actually uncovering non-compliance and the ability of inspection authorities to target inspections effectively.

- Sanctions dimensions. The third group of factors determines the expected value of sanctions for non-compliance, that is, the probability of a sanction being imposed where non-compliance is detected and the severity and type of likely sanctions.

Source: OECD (2010), *Better Regulation in Europe: the Netherlands*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084568-en.

In general, compliance rates in Chile are thought to be high, but there is no monitoring mechanism that can prove this finding. Results from inspections,[1] the number of sanctions[2] applied and the level of complaints[3] received reflect that compliance rates are rather good. However, the approach to enforcement remains punitive rather than preventive, and regulators still prefer to inspect rather than teach regulated entities on better ways of achieving compliance. In the last few years the trend towards training public and private actors has increased in order to promote collaborative ways of compliance.

Institutions that have inspection functions are responsible for planning and managing their own inspection approach, but they normally do not follow a coherent and objective methodology. Control institutions, such as the Agriculture and Livestock Service or the Regional Ministerial Secretariat of Health, have a clear inspection role, but they still could improve in their role if they were to integrate techniques and more analytical and economic analysis of what they would like to achieve through collaborative inspections. The Customs Service, for instance, despite improvements, is overwhelmed by the number of inspections to be carried out and it does not always have the human resources to so promptly. Complaints from business associations, such as the Supermarkets Association, have reported that border inspections create delays that affect the sale of perishable goods (Bonilla, 2014).

Institutions with inspection functions do not normally publish their strategies or their results, and they conduct inspections on an ad hoc basis. Improving inspections in Chile is also related to reducing time and costs for businesses in getting permits and licenses, as well as to unify procedures and provide services on time.

Some positive experiences, however, can be shared. The Under-secretary of Transport plans its inspections based on the analysis and assessments of the results obtained the previous year. They also include views from the main stakeholders in the planning, which reflect adjustments in the methods and parameters used in their activities, to improve the quality of inspections. The results are proposed in an Annual Inspection Plan, which is flexible so as to incorporate actions as contingencies and priorities could be included as activities evolve. However, risk-based approaches are of no use here, as data collected to date do not allow for such an approach and there are no incentives for those complying with the regulations.

The Superintendency of Environment has also started to plan its inspections better, mainly by giving priority to certain activities, identifying risk activities, non-compliers and areas that suffer from environmental stress. In addition, it has drawn up Enforcement Programmes (*Programas de Cumplimiento*) which offer the possibility for non-compliers to either respond to the proposed sanction within ten days or to submit an Enforcement Programme by which they undertake to comply with certain specific measures in an established timeframe under the direct supervision of the Superintendency. If the regulated entity does not comply with its Enforcement Programme the sanction would be increased, and the fine could be doubled.

In terms of sanctions, each institution with enforcement responsibilities has its own sanctions and applicability procedures. When someone does not comply with regulation, an infringement procedure is launched with a possibility of imposing a sanction (a fine in most cases). Some institutions, such as the Superintendency of Environment, have reviewed their system of fines, in order to update it and make it an effective dissuasive mechanism to comply with regulations. In some policy fields, such as agriculture, regional directors, representing the ministry at regional level, can apply sanctions and

fines that might vary from region to region. Regulated entities and citizens can appeal such sanctions. Appeals against sanctions can represent up to 30% of the total sanctions applied.

Use of risk-based approaches

Regulators should be required to develop, implement and review regulatory compliance strategies against risk-based criteria. Risk assessment, risk management, and risk communication strategies for the design and implementation of regulations should be introduced gradually to ensure that regulation is targeted and effective. Regulators should also build an accountable system for the review of risk assessments accompanying major regulatory proposals that present significant or novel scientific issues, for example through expert peer review. However, the government of Chile should bear in mind that the implementation of risk-based approaches to regulatory enforcement requires specific institutional capacity, which may take time to develop. Consequently, the application of these approaches must be planned and incremental.

Box 6.2. **The application of the principles of risk in compliance and enforcement in the United Kingdom**

The **United Kingdom** Hampton review on reducing administrative burdens through better compliance and enforcement practices was published in March 2005. In April 2008, the United Kingdom issued *The Regulators Compliance Code*, a statutory code of practice intended to ensure that inspection and enforcement are efficient, both for regulators and those they regulate, and based upon risk principles. The Code gives the seven Hampton principles relating to regulatory inspection and enforcement, a statutory basis, and is binding on UK regulators. It requires the following:

- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- No inspection should take place without reason.
- Businesses should not have to give unnecessary information or give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

It was important to review the success of these measures in practice and in July 2008, the United Kingdom National Audit Office reported on reviews of the performance of the five largest regulators in implementing the Hampton principles. The regulators were the Environment Agency, Health and Safety Executive, Financial Services Authority, Food Standards Agency, and the Office of Fair Trading. The general conclusion was that regulators had accepted the need for risk-based regulation and, in most cases, had established mechanisms to assess risk and direct resources accordingly. There were, however, a number of common challenges faced by

Box 6.2. **The application of the principles of risk in compliance and enforcement in the United Kingdom** (*cont.*)

regulators. Among these the development of a comprehensive risk assessment system to deal with a wider range of risks, including those applying to the regulated sector generally and at the level of the firm, so that resources could be applied effectively. The review concluded that there was considerable value in regulators sharing their knowledge and experience.

Source: United Kingdom Government (2005), "Reducing Administrative Burdens Effective Inspection and Enforcement", The Hampton Review – Final Report, March, www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf; United Kingdom (2007), "Regulators Compliance Code: Statutory Code of Practice for Regulators", Department of Business Enterprise and Regulatory Reform, 17 December, www.berr.gov.uk/files/file45019.pdf; and United Kingdom Government (2008), "Regulatory Quality: How Regulators are Implementing the Hampton Vision", National Audit Office, www.nao.org.uk.

There is no clear promotion of risk management and risk assessment in the regulatory process in Chile. One of the main issues that affect the introduction of risk-based approaches in regulatory activities is the lack of adequate information and the unavailability of historical databases that could provide accurate data on the evolution of the supervisory and control function.

However, there are certain policy fields where these topics have been explored. Risk analysis and risk management are mainly used in the financial sector, insurance and pension funds management and the activities related to prevention of money laundering and terrorist activities. The Superintendency of Stocks and Insurance, Superintendency of Banks and Financial Institutions, Superintendency of Pensions and the Financial Analysis Unit develop risk strategies. Other regulators, such as Customs and the Agriculture and Livestock Service have also introduced risk strategies in their inspection operations and supervision roles.

The Agriculture and Livestock Service also conducts their inspections based on risk-based approaches. The Service prepares an annual plan for inspections that should ensure compliance with the current regulation. Each inspection unit has established inspection standards that are built based on a universe of inspected entities, following a risk analysis. The selection of that universe is then correlated with budget availability to ensure that inspections can really take place.

Appeal process for regulatory decisions

The role of the judiciary is essential for regulatory quality control and economic performance. The effectiveness of the process arises from the ability of the judiciary to consider the consistency of regulations with principles of constitutionality, including notably proportionality and the right to be heard. It also arises from scrutiny by the courts of whether secondary regulation is fully consistent with primary legislation. A feature of regulatory justice is the existence of clear, fair and efficient procedures to appeal administrative decisions and regulations. Regulatory authorities must exercise their powers only within the scope permitted by their legal mandates, treat like cases in a like manner, and have justifiable reasons for decisions, and for any departure from regular practice. Embedding the principles in law and providing for effective appeal processes

prevents abuse of discretionary authority, and preserves the integrity of the regulatory system.

In general there are two ways to challenge a regulation:

- The first option is the procedure established in the regulation itself, which normally includes an instance that could review the sanction imposed by the authority that issued it. Law No. 19.880 from 2003, which sets the basis for the administrative procedures that regulate the acts of institutions of the State administration, establishes the principles for reversal and hierarchical recourse against decisions by the administration. Citizens also have a right to an extraordinary recourse of revision according to the same law. In some cases, there might be two proceedings, as the hierarchically superior institution can also play the appeal role, but this does not always happen. There is always the possibility of challenging the administrative act either by judicial means, lodging an action in the ordinary courts of justice by an application to have a public right declared null and void, or by administrative means with a petition to the Comptroller General of the Republic. Both types of action can be mutually exclusive, but using one does not deny the person the right to use the other.
- The second option is the appeal to have the act declared inapplicable due to its unconstitutionality, which is an external mechanism of the regulation. This appeal requires the affected party to make a formal appeal to the Constitutional Court against a specific regulation, which is the court responsible for handing down an opinion and verdict.

The different types of appeal stem from the specific sectoral regulations, particularly related to fines and sanctions, which can describe up to a hundred types of administrative procedures.[4] By establishing those procedures, regulatory institutions have offered various types of protection to citizens, depending on the sector. Accordingly, there are old mechanisms, such as those of the Agriculture and Livestock Service, and more modern mechanisms, such as those of the Superintendency of Environment.

All administrative regulation is bound by jurisdictional control. Both at constitutional and legal levels, there is a right to effective judicial protection. In this respect, Articles 6, 7, 19, 20, 38, 76 and 93 of the Constitution describe the different types of measures related to the judicial protection of citizens, such as principles of legality and competence, the right to effective judicial protection, the action of constitutional protection of fundamental rights, such as the jurisdictional recourse in emergency cases against any arbitrary or illegal act or omission that could imply privation, disturbance or threaten the legitimate execution of rights and guarantees protected by the law, the patrimonial responsibility principle of the administration, the competences of the Constitutional Court and the principle of inexcusability that links the courts of justice to their fields of competence.

Law No. 18.575 that establishes the Constitutional Organic Act for the Administration of the State and Law No. 19.880 are the key legal instruments to ensure a judicial review of administrative acts. Administrative contentious cases are a matter for the ordinary courts of justice, which can review regulations and determine a "contentious of nullity" (*contencioso de nulidad*) to set the principle of juridicity or rule of law or a "contentious of compensation" (*contencioso de indemnización*), which can lead to reparation for the damage caused. Courts of Appeal also accept the recourse to protection, in extraordinary cases where arbitrary or illegal acts or omissions imply privation,

disturbance or threaten the rights and guarantees that are included in Article 20 of the Constitution.

The current government has paid particular attention to ways in which the role of judges and the judiciary can be improved to ensure legal protection for citizens, but also to expedite justice. The subject of environment illustrates this trend, as the creation of special Environmental Courts was a consequence of the need to improve access to justice and ensure that judges are promoting the protection of citizens (see Box 6.3).

Box 6.3. **Environmental courts in Chile**

The design of the environmental institutional set-up in Chile has evolved rapidly over the last few years. The Ministry of Environment is responsible for policies and regulations, while the Environmental Evaluation Service is responsible for the management of the System of Environmental Impact. The Superintendency of Environment is in charge of supervising enforcement and compliance of the tools for environmental management and the Environmental Courts have been established to handle the "dilemma of efficiency-effectiveness of the regulation with regard to the rights of the regulated and citizens".[5]

Environmental Courts are a special judicial body, whose main role is to solve environmental controversies, according to Law No. 20.600 of June 2012. They are not part of the judicial power in Chile, even if they are under the directive, correctional and economic dependence of the Supreme Court. Law No. 20.600 has established three environmental courts: in the north (Antofagasta), in the centre (Santiago) and in the south (Valencia) of the country. Environmental courts are collegial mixed bodies (they are composed of three ministers, two lawyers and a professional in natural sciences, and two deputy ministers, one lawyer and one professional in natural sciences). The President of the Republic with agreement of the Senate appoints ministers, while the Supreme Court nominates them.

Among other matters, environmental courts are responsible for:

- Studying appeals lodged against supreme decrees that establish the primary and secondary environmental regulations and emission norms.
- Receiving lawsuits to obtain reparation for the environmental damage.
- Receiving lawsuits against resolutions of the Superintendency of Environment.
- Authorising provisional measures, suspensions, or sanctions by the Superintendency of Environment.
- Studying the appeals presented by any citizen or business against the verdict of the Committee of ministers or executive director that solves the administrative recourse when their observations have not been taken into consideration during the environmental evaluation process.
- Studying the lawsuits against the administrative acts of ministries or public services in the implementation and execution of quality norms, emission norms or prevention or decontamination, when they infringe the law, the norms, or the objectives of the above-mentioned tools.

Law No. 20.600 states that environmental courts should be responsible for appeals against the illegality of certain administrative acts and norms issued by the Ministry of Environment, the Superintendency of Environment, the Environmental Evaluation Service, the Committee of Ministers or any other body responsible for environmental issues. It should also respond to lawsuits for environmental damage.

Source : www.tribunalambiental.cl.

Assessment and recommendations

Enforcement strategies driven by compliance, more than sanctions, should be promoted among regulatory institutions and superintendencies, making use of risk-based approaches to deploy their resources better.

As in many other Latin American countries, enforcement in Chile is mainly seen within the framework of command-and-control regulation, applying sanctions to those who do not comply with the regulations in force. Institutions have made progress in setting sanctions that are in proportion to the rules broken, as an appropriate deterrent for non-compliance. The laws that create each regulatory institution in Chile establish the type and amounts of sanctions that should be applied, which gives each institution the freedom to introduce the sanction mechanisms in relation to the behaviour to be punished.

Despite it being an important step to have an appropriate system of sanctions, regulators in Chile should also promote compliance through other means, such as education, codes of conduct and self-regulation schemes, which are less punitive and more consensus-based, and influence behaviour change to promote compliance.

For this to happen there is a clear need for change in the regulator´s culture. Regulators should help regulated entities, whether businesses or citizens, to better understand the regulations and requirements in place with which they have to comply. Regulatory processes should be more transparent in order to guarantee access to information with regard to requirements in a timely manner. Regulators should also be supportive regarding actions to encourage regulated parties to comply with regulations, and not only punish them through sanctions. This means that superintendencies, mainly in charge of supervision and control, and regulators also with that function, should be encouraged to participate actively in any regulatory reform initiative so they can participate in the cultural change required to deal with enforcement shortcomings.

The government of Chile should streamline the various channels for administrative and judicial review.

There is scope to improve the various channels for administrative and judicial review that the Constitution and different legal instruments in Chile grant to citizens. There are different levels and mechanisms to ensure that citizens are protected against arbitrary regulatory decisions, but the system could be encouraged by more streamlined and flexible procedures, the use of ICT and more specialised technical capabilities.

Good experiences have already been had in certain sectors, such as the environment, where judicialisation presents a serious issue to be faced. The sector shows that simplification and specialisation have been important in order to cope with the degree of expertise required to take decisions and the need to have special channels to deal with the increasing number of cases. An appropriate institutional set-up to solve administrative and judicial appeals is essential to promote transparency, accountability and responsiveness. This is why the example of environmental regulation could be replicated in other sectors where the existing mechanisms impose excessive costs, are lengthy and unnecessarily constrain all the actors involved.

Notes

1. Compendium of Statistical Series 1990-2013 of the Labor Directorate, in particular its inspections role, www.dt.gob.cl/documentacion/1612/articles-95234_recurso_1.pdf.
2. Detailed sactions of the Superintendency of Health between 2007 and 2012, www.supersalud.gob.cl/documentacion/569/w3-article-7173.html.
3. Statistical Reports of the Financial Analysis Unit, available since 2009, www.uaf.cl/estadisticas/.
4. In a study published in 2005, Carmona identified about 120 special contentious administrative cases in 2003, a number that gradually increased up to 140 in the latest years. This has led to a "contentious inflation" in the Chilean system. Carmona Santander, Carlos (2005), "El contencioso administrativo entre 1990-2003" in Ferrada Bórquez, Juan Carlos (coord.), *La Justicia administrativa*, LexisNexis, Santiago, p. 204
5. Message sent by the President Michelle Bachelet to Congress when transmitting the law proposal that created the Environmental Courts.

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Chapter 7

Ex post regulatory evaluation in Chile

Chapter 7 describes the importance of designing and implementing an ex post regulatory evaluation for norms. The evaluation of existing policies through ex post impact analysis is necessary to ensure that regulations are effective and efficient. In some circumstances, the formal processes of ex post impact analysis may be more effective than ex ante analysis in informing an ongoing policy debate. The chapter expresses the rationale of why this practice should be considered early in the policy cycle, and introduced in the regulatory cycle by the government of Chile. Furthermore, it presents the idea of broadening the scope of evaluation towards programmes and institutions.

Ex post evaluation of regulations, policies and institutions is a key part of the regulatory governance cycle that should be encouraged as an on-going activity. The feedback regulators can obtain from a systematic *ex post* evaluation process can make a difference in the way they deal with regulatory concerns and can help to make regulation more effective and efficient. *Ex post* evaluation is also essential to make regulators and their decisions more accountable towards the public.

Ex post evaluation of regulations

The evaluation of existing policies through *ex post* impact analysis is necessary to ensure that regulations are effective and efficient. In some circumstances, the formal processes of *ex post* impact analysis may be more effective than *ex ante* analysis in informing an ongoing policy debate. Consideration should be given early in the policy cycle to the performance criteria for *ex post* evaluation, including whether the objectives of the regulation are clear, what data will be used to measure performance, as well as the allocation of institutional resources. It can be difficult to direct scarce policy resources to review existing regulation; accordingly, it is necessary to systematically programme the review of regulation and ensure that *ex post* evaluation is undertaken and given priority. Practical methods include embedding the use of sunset clauses or requirements for mandatory periodic evaluation in rules, scheduled review programmes, and standing mechanisms by which the public can make recommendations to modify existing regulation.

Box 7.1. *Ex post* evaluation of laws in OECD countries

In **France**, several organisations monitor the correct implementation of regulations and supply information for evaluating regulations once they have been implemented. One of these bodies is the French National Assembly. The Commission of Constitutional Law, Legislation and General Administration of the Republic deals with issues about constitutional law, organic laws, internal rules, electoral law, public freedom, security issues, administrative law, civil service, judicial organisation, civil law, commercial law, general administration of the State and territorial collectives. The Commission prepares a number of reports for information on topics of interest to the French society. It also prepares control reports on the application of certain laws (*Rapports sur la mise en application de la loi*). In most cases, these reports contain an analysis of proposed amendments that are discussed in parliament, as well as points of view of various stakeholders interested in the issues. The Commission also publishes a yearly report on the implementation of approved laws and an overall assessment for each legislature. It examines the ability of the government to implement the law using enabling decrees.

In **New Zealand**, the Regulations Review Committee, a specialist committee within the House of Representatives, examines all regulations, investigates complaints about rules, and examines proposed regulation-making powers in bills. Although it carries out technical scrutiny of regulations, the committee seems to rather watch over the constitutionally proper use of regulation-making powers than dealing explicitly with regulatory quality or conducting *ex post* evaluation. The committee scrutinises existing regulations, it is composed of seven voting members and by convention it is chaired by a member of the opposition. It can only analyse draft regulations if referred to it by a minister. A complaint should be made in writing and needs to set out how the person or the organisation making the complaint has been aggrieved. It should also address one of the following:

Box 7.1. *Ex post* evaluation of laws in OECD countries (*cont.*)

- the relationship between the Act and the regulations;
- the practical operation of regulations;
- the implementation of the policy in regulations;
- the regulation-making process itself.

Source: French National Assembly, www.assemblee-nationale.fr/commissions/59051_tab.asp; and Parliamentary Counsel Office of New Zealand, www.pco.parliament.govt.nz/law-drafting.

Chile is one of the few OECD countries that have formalised the *ex post* review of laws in the legislative. The Law Evaluation Department (*Departamento de Evaluación de la Ley*) was created by an agreement of the Commission on Internal Regime, Administration and Regulations, issued on 21 December 2010.[1] The main responsibilities of this department are:

1. Evaluating the legal norms approved by the National Congress in co-ordination with the Secretary of the Commission in charge. The evaluation is made based on the effectiveness and influence on society. The Department might propose corrective measures to improve the implementation of the law evaluated.
2. Creating and maintaining a network of social organisations interested in participating in the evaluation process.
3. Informing the Secretary-General, through the Commission of Internal Regime, Administration and Regulations, about the results of evaluations.
4. Suggesting amendments to the current legislation, if needed.

The Law Evaluation Department is in charge of developing a three-stage project to evaluate the effectiveness of laws. The three stages cover the following issues: technical analysis, citizens´ perception and preparation of a final report. The analysis of laws has the following objectives:

- Determining the degree of compliance with the expected objectives when the law was passed.
- Identifying the externalities, impacts and non-desired effects when Congress was legislating.
- Knowing citizens´ perception about the law and its implementation.
- Proposing corrective measures to the law and its implementation.

Citizens' perception is a fundamental stage in the suggested approach for *ex post* evaluation of laws in Chile. As part of the various stages for law evaluation, citizens' perception is an important component of the methodological approach. The Law Evaluation Department has designed tools to collect information about that perception, such as on-line questionnaires, on-line chats, questionnaires for particular groups,

1. This was formalised by Official Note 381 of the Presidency of the Chamber of Deputies. The agreement was ratified by Resolution 857 of 27 January 2011 signed by the Secretary-General of the Chamber of Deputies.

development of focus groups, workshops, etc. It also built a database containing registries of civil organisations and people that are linked to the Chamber of Deputies, in terms of their participation in legislating, supervising or representing particular stakeholders. The Law Evaluation Department has also created a Citizen Forum, an open space for personal or virtual participation, where civil organisations or citizens are able to express their opinions.

Each assessment is presented in a report that generally contains the description of the research, an analysis of the information gathered, conclusions, recommendations and a dissemination strategy. To date, the Law Evaluation Department has conducted the six reviews presented in Box 7.2.

Box 7.2. *Ex post* reviews prepared by the Law Evaluation Department of the Chamber of Deputies

To date, the Law Evaluation Department has published six reports that review relevant laws for the Chilean society. All reports present conclusions and recommendations to the executive and Legislative to improve and update laws. The main features and findings of the reports are described as follows:

- The first report reviewed Law No. 20.413 which determines who is considered an organ donor and the manner in which they may manifest their intention. The Law was published in 2011 and the review showed that the definition of universal or alleged donor was a theoretical concept with no practical use. The law was not executed in accordance with the presumptions originally established, since the family´s permission is still required when removing organs from a citizen. The recommendations referred to legal amendments in the definition of universal donor and to the need to strengthen the public health institutions that maintain the national list of patients waiting for an organ, as well as to enhance the planning and management of permanent education campaigns with a budget allocation for this matter.

- In November 2012 Law No. 20.422, which establishes norms on equal opportunities and the social inclusion of people with disabilities, was reviewed. The conclusions showed there were institutions, in which some entities were in charge of complex responsibilities with limited resources and lack of data and information. The recommendations therefore pointed to the need to improve the governance of these institutions and allocate sufficient resources to be able to implement the respective policy.

- The third evaluation exercise, published in June 2013, was on Law No. 18.600, which establishes norms for the mentally disabled. The report showed that there were inaccuracies in the treatment of the exercise of legal capacity of mentally disabled people, their rights potentially being violated through the figure of provisional trustee and inconsistencies with international treaties and conventions. Recommendations included amendments to the legal framework for mentally disabled people, the repeal of the figure of provisional trustee and the update of the legal and social language used in the law.

- In June 2013 the Department evaluated Law No. 20.348 on the right to equal remuneration. The wage gap between men and women persists in Chile, which calls for incorporating the gender perspective in public policies and laws. In addition, the current law does not provide adequate incentives or a solution to those affected by the problem of wage discrimination. The recommendations therefore suggested to incorporate the concept of "work of equal value", incentives and adequate sanctions for enforcement.

Box 7.2. *Ex post* reviews prepared by the Law Evaluation Department of the Chamber of Deputies (*cont.*)

- In January 2014, the report on Law No. 20.000, which sanctions the illicit traffic of narcotics and psychotropic substances, was published. It included a discussion on the current national and international debate about this topic, as well as the focus on deficiencies in the legal body and the way it is implemented by certain institutions. The recommendations for improvement included incorporating new tools and parameters in the law, such as the role of the accused in the distribution chain, the existence of direct contact with the consumer, the tools used and the amount of money seized, in addition to better defining the term of micro-traffic.
- In August 2014, the review of Law No. 20599 that regulates the installation of pylons and aerials for telecommunication transmission, was finalised. The report focused on the authorisation process, the role of civil society in the discussions, the potential damage associated to this infrastructure, and the urban impact of aerials. The recommendations suggested to improve the authorisation process, to set tougher parameters to install aerials, and to improve co-ordination among institutions involved in the process.

All the reports have been presented to the Chamber of Deputies and they are public documents at the disposal of any citizen, interested institution and different powers accessible through the official portal: www.evaluaciondelaley.cl.

Source: Cámara de Diputados (2014), *Evaluated Laws. Term 2011-2014*, Evaluación de la Ley, Santiago.

The results of the various reviews have contributed to preparing legal amendments to the laws that were reviewed. For instance, the Ministry of Health and the parliamentarians in the Health Commission in the Chamber of Deputies used the report on organ donation to prepare the legal amendments that were finally approved. The report on Law No. 20 000 contributed to the legal and citizens´ discussions, helping to change the criteria in authorising the farming of cannabis and the approach to illicit drugs. The review of Law No. 20 599 also helped to prepare the legal amendments presented to Congress.

After some years' work, the Law Evaluation Department has identified the need to conduct *ex post* evaluation on secondary regulations (*reglamentos*), as in some cases there are substantial discrepancies between laws and *reglamentos*, which should be consistent and reflect a harmonious legal framework. The preparation and amendment of *reglamentos* is a competence exclusive to the executive, which calls for the executive to also carry out an *ex post* review. The Law Evaluation Department has proposed collaboration with SEGPRES to conduct *ex post* evaluation on *reglamentos* and create a history of how they are prepared and their required amendments.

Another *ex post* work that has been promoted and improved in Chile is the work conducted by the *Ex post* Evaluation Department of the Budget Directorate of the Ministry of Finance. Even if the *ex post* evaluation is mainly oriented towards ensuring that expenditures have been made in accordance with what was proposed improve transparency and efficiency in the use of public resources, the technical team has developed capacity and it could be feasible to learn from that experience to support the *ex post* analysis of regulations.

Ex post evaluation of regulatory programmes and institutions

Information on the performance of regulatory reform programmes is necessary to identify and evaluate if regulatory policy is being implemented effectively and if reforms are having the desired effect. Regulatory performance measures can also provide a benchmark for improving compliance by agencies with the requirements of regulatory policy, such as reporting on the effective use of impact assessment, consultation, simplification measures, and other practices.

Box 7.3. *Ex-post* evaluation of regulatory programmes in the United Kingdom

The **United Kingdom** is ahead of many other OECD countries with its understanding of the importance of *ex post* evaluation of specific Better Regulation policies, in developing processes for this, and in using the results to strengthen specific practices (such as *ex ante* impact assessment). Good use is also made of the evaluation work of the independent National Audit Office (NAO). The depth and number of individual policies launched underlines the need for a strong and sustained *ex post* evaluation of their effectiveness.

The NAO provides an external, professional, concrete, independent view on the quality of regulatory management. It has provided, over the last few years, valuable input to key Better Regulation programmes and processes such as impact assessment and simplification. It has recently been engaged in joint review activities with the Better Regulation Executive (BRE). Its independence is an asset that has played an important role for these activities. The National Audit Office has produced a number of reports since 2001 on aspects of regulatory reform, in particular the Impact Assessment process, the Administrative Burdens Reduction Programme, and business perceptions of regulation. Despite considerable efforts to improve the business experience of regulation, there has been little discernible progress in improving business perceptions of regulation. In its 2011 Report on Delivering Regulatory Reform, NAO has made the following recommendations to continue improving regulatory reform in the United Kingdom:

- **Good information and co-ordination is essential for the effective management of the use of resources**. Past work to measure administrative costs and compilation of a Forward Programme of proposed new regulations have helped in managing these aspects of regulation and strengthening incentives for departments. Departments and the Better Regulation Executive know which areas of regulation continue to concern business most but do not have a clear picture either of the size of the policy costs and benefits resulting from the stock of existing regulation, or of the capacity of businesses and others to respond to new proposals. The Better Regulation Executive should identify cost-effective ways of strengthening its understanding of the costs and benefits of regulation as experienced by business and use their findings to guide future work on reviewing and reforming regulations.

- **Departments differ in the vigour with which they are seeking to identify opportunities to simplify regulations**. The Department for Environment, Food and Rural Affairs is reviewing all of its stock of regulation in order to identify opportunities to reduce regulatory costs in order to offset the cost of proposed new regulations. Other departments are not, however, and all departments should consider such a review.

- **Evaluation and feedback remains a weak element of regulatory management**. The Better Regulation Executive has recently implemented changes intended to improve in this area. It should also work with departments to strengthen incentives for departments to plan, and then carry out, evaluation of regulations after they have been implemented, and to use the findings to revise the regulations accordingly.

Box 7.3. *Ex-post* evaluation of regulatory programmes in the United Kingdom (*cont.*)

- **Businesses remain concerned that they are not consulted before new regulations are introduced**. Policy-makers should increasingly try to engage with businesses before formal consultation, using routes such as business organisations, the Small Firms Database and stakeholder groups. Details of this informal consultation should be included and published in Impact Assessments.
- **There is as yet no detailed implementation plan in place for delivering the coalition government's regulatory reform objectives**. To strengthen its programme management approach the Better Regulation Executive should develop and consult on an implementation plan covering the life of the new regulatory reform programme. The plan should define what success will look like and how it will be measured, and include a timetable for activity, as a baseline for the programme management of regulatory reform in the future.
- **Clarity over accountability and effective incentives on departments are important in achieving good quality regulation**. To improve the quality of regulation the Better Regulation Executive should work together with the Cabinet Office to develop a clearer statement of accountabilities for departments and the Better Regulation Executive.

Source: OECD (2010), *Better Regulation in Europe: United Kingdom*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084490-en; NAO (2011), "Department for Innovation, Business and Skills: Delivering Regulatory Reform", Report by the Comptroller and Auditor General, London, February.

Since Chile does not have a programme on regulatory quality there has not been any *ex post* evaluation of such an instrument. Nor is there is any mechanism to evaluate the performance of regulatory institutions, apart from the fact that institutions have to meet some objectives and targets that are specified in laws founding them.

Assessment and recommendations

Ex post review of laws should be strengthened and the recommendations by the Law Evaluation Department should be used to further improve regulatory quality.

The successful introduction of *ex post* evaluation of laws in the Chamber of Deputies in Chile is a clear example of the relevance of periodically reviewing the legal framework in order to keep it valid and coherent over time. The work conducted so far in Chile shows that *ex post* evaluation of laws can provide good evidence for legal amendments that should benefit society as a whole. This work has to be carried out in more depth and strengthened in order to become a systematic process that promotes regulatory quality. It could also benefit from the inclusion of sunset clauses or review clauses, which would compel regulators to promote *ex-post* reviews after some years' validity.

The work conducted by the Law Evaluation Department is becoming a reference within the Chamber of Deputies when they need to review a given law. It has also provided a framework for stakeholders´ participation, which value the work done in

hearing their opinions and assessing how laws have affected them. The methodology selected, even if it could be improved to introduce more evidence-based techniques, has proven to be useful to approach citizen´s perceptions in relation to specific laws.

The Law Evaluation Department could benefit from extended support and resources and the expertise from additional professionals to support a multi-disciplinary team in charge of reviewing existing laws. The reports should continue to be public and it would be important to ensure that they are used for further decision-making.

The government of Chile should introduce* ex post *evaluation of secondary regulations.

Chile has been a pioneer in the *ex post* evaluation of laws, but additional steps should be undertaken to ensure that other regulations, in particular secondary regulations, are also part of this systematic work and that the whole legal system benefits from this process. The laws and regulations should be periodically reviewed and done in co-operation with the executive and the legislative, taking into account that most information on the implementation side lies in the regulatory bodies of the executive branch. The executive, therefore, should actively participate in this process and ensure that the institutions responsible for the implementation of laws co-ordinate with each other.

The *ex post* review of laws and regulations should contribute to improving the quality of the regulatory system as a whole. It should also be linked to the introduction of *ex ante* RIA, as this will allow the regulatory development cycle to be closed and ensure that both new and existing regulations follow a comprehensive approach to impact assessment that can help regulators identify when and how regulatory intervention is required. Over the years, *ex ante* assessments could set the baseline for conducting *ex post* evaluation of regulations.

Once a programme for regulatory quality is introduced, ensure that its performance and impact is reviewed regularly.

Many OECD countries periodically conduct reviews to assess the performance of regulatory reform programmes, policies and tools. This helps governments improve their design and implementation, ensuring that they are responsive to the needs that regulation imposes on society. Countries also use this process to refine strategies, engage with stakeholders, and make the regulatory system more transparent and accessible. If external bodies, such as auditors or comptrollers, conduct these reviews, it will help ensure accountability in the regulatory system and regulatory institutions.

For a country like Chile, where there is currently no regulatory reform programme, it would be important to think that once a regulatory quality strategy is developed and introduced, that it would be reviewed at some point, in order to ensure that such a policy achieves its objectives. It would also be important to allocate that responsibility to an external body which can provide recommendations for further improvement.

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Chapter 8

Multi-level regulatory governance in Chile

This chapter sheds light on the organisation of the Chilean territory and its distribution of regulatory powers. It looks at how in most OECD member countries, different levels of government coexist and how they deal with the each one's set of rules and attributions. It explains why promoting regulatory quality at the sub-national level would benefit citizens and business, especially with the ongoing initiatives of decentralization. It further describes the multi-level regulatory framework necessary to design, implement, and enforce regulation in order for one level not to undermine the other level's regulatory effectiveness. Finally, it proposes a multi-level co-ordination mechanism in order to attain regulatory goals, as well as sharing good practices and possible learning experiences.

The 2012 OECD *Recommendation of the Council on Regulatory Policy and Governance* addresses multi-level regulatory governance in two items concerning coherence and co-ordination, and regulatory management capacities. Achieving co-ordinated reform across multiple levels of government is certainly a case where the whole is greater than the sum of its parts.

In most OECD countries, different levels of government coexist. Central government bodies, supported by a network of institutions and rules, function alongside regional and local governments, with their own set of rules and attributions. In this context, the different layers of government have the capacity to design, implement, and enforce regulation. This multi-level regulatory framework poses a series of challenges that affect the relationships of public entities with citizens and businesses and, if poorly managed, may have a negative impact on economic growth, productivity, and competitiveness. Among others, the challenges include avoiding duplicative or overlapping rules, low quality regulation, and uneven enforcement.

The OECD has found that high quality regulation at one level of government can be undermined by poor regulatory policies and practices at other levels, adversely affecting the performance of economies and on business and citizens' activities. In order to ensure regulatory quality across levels of government, the principles that lower levels of government should follow must be defined. Clear definitions and effective implementation of the mechanisms to achieve and improve co-ordination, coherence, and harmonisation in making and enforcing regulation must also be in place. Finally, measures to avoid and eliminate overlapping responsibilities are also critical.

The OECD developed a framework to analyse key issues of multi-level regulatory governance. It claims that an analytical framework for multi-level regulatory governance should address a number of issues, including regulatory policies and strategies, institutions, and policy tools. On regulatory policies and strategies, issues related to harmonisation of regulatory policy and vertical co-ordination for regulatory quality must be addressed. The definition of roles and responsibilities of institutions responsible for regulatory policy is also an important element in this context, with the aim of strengthening institutional capacities. Finally, a set of regulatory policies and instruments that should be applied at lower levels of government, such as the introduction and use of regulatory impact assessment, transparency, reduction of administrative burdens, as well as tools to improve compliance and enforcement of regulation, are included in the agenda of a multi-level regulatory governance framework.

The organisation of the Chilean territory and the distribution of regulatory powers

The Constitution establishes that Chile is a centralised unitary state. The State administration is functionally and territorially decentralised or deconcentrated. Chile has a three-tier government system: 15 regions, 52 provinces and 345 municipalities (*comunas*). Yet, under the tight administrative, fiscal and regulatory framework of the central state, the main sub-national actors remain largely controlled by national guidelines and regulations.

The administrative authority at regional level used to be directed by an intendant (*Intendente*) as head of the regional executive appointed by the President, and a regional council (*consejo regional*) indirectly elected by municipal councillors. Until 2009, the regional councillors were elected indirectly, but an amendment to the Constitution through the enactment of Law No. 20.390 established that regional councillors had to be elected by universal direct vote. The first direct election took place in 2013 and regional councillors elected through this mechanism took office on March 2014. Law No. 20.757, enacted in 2014 as a result of the same constitutional amendment, established that the regional council must not be headed the intendant any longer, but by a president elected by the councillors. All 15 regions now have their presidents elected in this way.

A Governor is the head of the Province and governors are appointed by the President and directly report to the regional Intendant. Municipalities are governed by a mayor (*alcalde*), who heads the local administration, and a municipal council (*concejo municipal*), with decision-making, regulatory and supervisory functions. Both, the mayor and the council, are directly elected by citizens for four-year terms. The composition, organisation and functions of the different regional, provincial and local governments are summarised in Table 8.1.

Table 8.1. **Chile's territorial units, governance and main functions at sub-national level**

Regions (15)	a) The government of the region – national government line • Intendant (Intendente): The direct representative of the President of the Republic in each of the regions. The intendant is appointed by the President of the Republic and is maintained in office at his/her discretion. The intendant directs the government of the region according to the guidelines given directly by the President. He/she supervises, monitors, and implements public services under his/her competences. b) The regional government – territorially decentralised line • Intendant (Intendente): Acts as the executive head of the regional government and presides the Regional Council. • Regional Council: Supervises the intendant's duties. It is a normative, resolutive and supervisory body, composed by members elected democratically. **Main functions of the regional government:** • Designing programmes and policies for regional development and productivity. • Approving the regional development plan. • Defining and taking investment decisions regarding use of resources from regionally defined public investments, especially from the National Fund for Regional Development (FNDR). • Advising municipalities. • Building and administering the paving of sidewalks and roads in rural areas. • Carrying out various tasks related to land management, human settlements and infrastructure equipment. c) Other organs of the public administration in the region: • Ministerial regional secretaries (SEREMIS): National ministries' regional representatives who co-ordinate the public services under their responsibility. The Regional Ministerial Secretariats for Social Development key institution in the investment process, establishing its social profitability.
Provinces (52)	• Governor (Gobernador): Appointed by the President. He is the territorial deconcentrated authority of the intendant in the territory of the province. **Main functions:** • Supervising public services provided in the province; maintaining public order and citizens' safety.
Municipalities (345)	• Mayor (Alcalde): Highest authority in a municipality; chair of the municipal council. • Municipal council: Advises, regulates and supervises the mayor's performance. It is in charge of ensuring the effective participation of the local community. • Community Council of Civil Society Organisations: It is an entity of the municipality composed of representatives of civil organisations of the commune, aimed at ensuring their participation. Both the mayor and the council are chosen through popular elections every four years.

	Main functions: • Exclusive functions (atribuciones esenciales): Developing, approving and modifying the communal zoning plan (Plan Regulador Comunal); preparing the local budget; promoting local development; enforcing all measures regarding transport; implementing provisions regarding construction, planning and urban regulation of the commune. • Shared powers (implemented either directly or in conjunction with other levels of government): public health, primary and secondary education, culture, work training and economic development, tourism, traffic regulations, social housing development and sanitary infrastructure and citizen safety. • Special attributions to carry out its functions: Collect fees for municipal services, concessions or licences; enforce taxes on activities or goods with a clear local identity to be used for communal development; award grants to public or private non-profit organisations; acquire or transfer moveable properties or real estate.
Regions (15)	a) The government of the region – national government line • Intendant (Intendente): The direct representative of the President of the Republic in each of the regions. The intendant is appointed by the President of the Republic and is maintained in office at his/her discretion. The intendant directs the government of the region according to the guidelines given directly by the President. He/she supervises, monitors, and implements public services under his/her competences. b) The regional government – territorially decentralised line • Intendant (Intendente): Acts as the executive head of the regional government and presides the Regional Council. • Regional Council: Supervises the intendant's duties. It is a normative, resolutive and supervisory body, composed by members elected democratically. • Main functions of the regional government: • Designing programmes and policies for regional development and productivity. • Approving the regional development plan. • Defining and taking investment decisions regarding use of resources from regionally defined public investments, especially from the National Fund for Regional Development (FNDR). • Advising municipalities. • Building and administering the paving of sidewalks and roads in rural areas. • Carrying out various tasks related to land management, human settlements and infrastructure equipment. c) Other organs of the public administration in the region: • Ministerial regional secretaries (SEREMIS): National ministries' regional representatives who co-ordinate the public services under their responsibility. The Regional Ministerial Secretariats for Social Development key institution in the investment process, establishing its social profitability.
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Source: SUBDERE (Sub-secretariat of Regional and Administrative Development) and OECD (2009), *OECD Territorial Reviews: Chile 2009*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264060791-en.

Organic Constitutional Law No. 19.175 on Government and Regional Administration establishes the constitutional mandate for regional governments, which must be aligned with other levels of government (national and municipal). Regions have to plan their action in relation to the national development policy and the national budget. They are also obliged to get a *toma de razón* from the Comptroller General of the Republic when they issue regulations, and they need to be in constant co-ordination with the national government. In terms of regulatory functions, regional governments have the following attributions:

- Approving and modifying the regional regulations that laws establish for their activities, without including additional procedures.
- Approving the regional urban development plans, the metropolitan and inter-communal regulatory plans and the communal regulatory plans proposed by the Regional Ministerial Secretariat for Housing and Urbanism or agreed by municipalities.
- The institutions and services of the national public administration have to inform regional governments about proposals of plans, programmes and projects that will be executed in the region.
- Municipalities must inform regional governments about their development plans, policies for service delivery, investment projects and budgets.

Regional governments are also responsible for implementing and monitoring the application of public services within the limits of their territories, in accordance with national regulation and with specific attributions granted by law. In that sense and given their responsibilities, anything related to the management of the territory and urban planning has a relevant impact on the quality of regulations and services provided at the regional level.

The required resources for the implementation of regulations at the regional level come from the national budget. Distribution of resources among the different bodies of the State administration, and in particular regional governments, is established annually in the National Budget Law. Amounts and the way distribution is conducted rely on some instruments, such as:

- National Fund for Regional Development (*Fondo Nacional de Desarrollo Regional*, FNDR)[1] is a programme of public investments with the aim of providing some territorial compensation, in order to finance actions in social and economic infrastructure to achieve a more balanced territorial development. The Ministry of Interior makes the transfers to the regional governments. The FNDR assigns 90% of the resources at the beginning of the fiscal year and 10% is dedicated to emergency situations and to spur efficiency in each budgetary cycle. For more detailed information on the FNDR see Box 8.1.
- Law No. 19.143 on Mining Permits establishes that 50% of the revenue from licenses for mining concessions has to be included in the FNDR, the national budget, and the region where the mining was undertaken.
- Law No. 19.995 on Casinos establishes the authorisation, functioning, and monitoring of casinos, imposing a 20% tax on the gross income generated by businesses operating casinos. Half of that tax has to be paid to the treasury of the regional government in which the casino is located.

- Law No. 19.657 on Geotermic Permits establishes the obligations arising from the concession and of an annual license. The funds from the patent fees are divided among the regions and municipalities.
- Law No. 20.017 on the Water Code (Article 129 (a) 19 of the Water Code) lays down that 75% of the net revenue from the licence for the non-use of the exploitation right has to be divided among the regions and the municipalities.
- Law No. 18.892 on Fishing and Aquaculture lays down that entitled concession-holders must pay a single annual license to operate. Half of that payment goes to the FNDR and it is subsequently transferred to the regions.
- Law No. 19.275 on the Fund for the Development of Magallanes, which supports the development of the Magallanes and Chilean Antarctic Regional Government, establishes that an equivalent amount of 25% of revenues from gas and oil exploitation rights in the region have to be included in the budget to constitute its Development Fund.

Box 8.1. **The FNDR**

The FNDR (*Fondo Nacional de Desarrollo Regional*) is the main direct mechanism for distributing resources to municipalities, territories and regions. Since 1975, the FNDR has functioned as a public investment programme for compensating disadvantaged territories and for targeted infrastructure financing. Funds are distributed to the regions, which channel them to the municipalities to finance local investment needs in a broad range of fields, including education, health, sanitation, roads, electric power, rural telephone service, embankments, and fisheries. Funds are allocated among regions according to socio-economic criteria and particular territorial handicaps, following a formula that includes several socio-economic indicators (population in poverty conditions and indigence in absolute and relative terms) as well as regional indicators (such as size of the region or differences in the cost of paving and construction). The nation's annual budget law establishes the objectives and regional distribution of each FNDR budgetary allocation. The regional governments determine the concrete projects to be financed. There are two different forms of FNDR: "FNDR of free disposition", which relies on the regional government to select the projects, and "Provisiones", which give regional governments less control over the project and over the territory within the region to which these investments will be allocated. The government's funds have been supplemented by a series of loans from the Inter-American Development Bank (IDB), the World Bank and the German Development Bank.

Source: SUBDERE.

Concerning regulatory interventions of municipalities, Law No. 18.695 on the Organic Constitution of Municipalities establishes that resolutions adopted by municipalities can be of different types:

- *Municipal ordinances*. These are general and compulsory norms applicable to the whole community. They can set fines for those infringing the law, applied by the courts of the local police.
- *Municipal regulations*. These are general, compulsory, and permanent norms related to the internal order of the municipality.
- *Municipal decrees*. These are resolutions on specific matters.

- *Instructions*. These are directives to the subordinates used for the internal organisation of the municipality.

Municipalities normally use municipal ordinances to regulate matters within their competence, according to Article 12 of Law No. 18.695. The Law is quite general and gives the municipalities autonomy to regulate as they deem best, which means that national laws and regulations are not uniformly applied at municipal level. For instance, formalities, processes and times to issue authorisations (*patentes*), particularly commercial licenses and construction permits, vary from one municipality to another.[2] Decree-law No. 3.063 on municipal income regulates municipal authorisations,[3] and Article 23 lays down that "any profession, trade, industry, commerce, art or any other profitable secondary or tertiary activity is subject to obtaining municipal authorisation". The Decree-law grants municipal authorities the right to set fees and conditions for authorisations in accordance with their needs and their own decisions.

In Chile, centralisation has traditionally been associated with economic efficiency and political stability. However, administrative and fiscal limitations on regional and municipal governments may be undermining their ability to carry out some of their responsibilities efficiently, thereby resulting in failure to take advantage of specific regional and local opportunities. This has led to a debate in Chile regarding reforms to the governance structure to improve the performance of sub-national governments. As part of those discussions, Chile is currently examining several proposals to increase the political, administrative and fiscal decentralisation process. In April 2014, the President of the Republic appointed a Presidential Advisory Commission for Decentralisation and Regional Development. The objective of this Commission is to prepare an agenda and a roadmap to intensify the decentralisation process in the country.

Important responsibilities have been transferred to Chilean municipalities but, on average, they have few resources and insufficient technical capacity to carry them out efficiently, a situation that is particularly problematic for less developed localities. It is fundamental to achieve sound regulatory outcomes and the Chilean Government should assess them carefully when taking decisions. Municipalities have few independent sources of revenue: sub-national revenues account for only 8.1% of total government revenues, a very low figure in comparison to OECD countries (OECD, 2009). They depend essentially on central government transfers and on an inter-municipal equalisation system, the Inter-municipal Common Fund (FCM), to carry out their principal devolved responsibilities, mainly primary and secondary education and basic health. Because the national transfers for education and health are insufficient to cover the provision of these services, municipalities must supplement national grants from their own resources. Small and less developed localities with small tax bases find this difficult to do and the FCM's compensatory mechanism has proven insufficient.

Municipalities are autonomous corporations of public law and have a legal personality. They have their own assets that should enable them to finance their expenditures and municipal services, in order to meet the functions and responsibilities that the Constitution and laws assigned to them. Each year, they establish their own budget. Law No. 18.695 enumerates the municipalities' resources, including assets that the municipality acquires, contributions from the regional government, income from the Inter-municipal Common Fund, income from their own activities, income from municipal taxes that are clearly specified by law and fines charged by the municipality.

Municipalities also have access to external sources of financing for communal investments. These resources can be administered in two ways:

- Direct income to the municipal budget, in the case of sources that are given as municipal income and are used for investment, such as the Programme to Improve *Barrios* and the Programme for Urban Improvement and Communal Infrastructure.
- As complementary accounting, in the case of resources that are not part of the municipal budget, but that the municipality uses as a bridge between the executing body and the administrator. Examples of this type of resource are the ones obtained through the FNDR, the President of the Republic Social Fund, the Solidarity and Social Investment Fund, the National Fund to Support Sports, the National Council to Control Drugs and the Programme for Citizens´ Security.

Additional resources are transferred to local levels of government in order to meet the goals of sectoral national policies and also from a local and regional perspective. These resources are mainly distributed through the FNDR, the Sub-secretariat of Regional and Administrative Development (*Subsecretaría de Desarrollo Regional y Administrativo*, SUBDERE) of the Ministry of Interior and Public Security. Some examples of provisions included in the 2014 Budget Law are the following:

- *Provision for Educational Infrastructure*. These resources are allocated to finance investment activities and the purchase of equipment, furniture, land for schools and improvement of schools in municipalities.
- *Provision for the Rural Infrastructure Programme*. Resources are allocated for construction, preservation and improvement of secondary roads, ports, rural sanitation, rural electrification with productive objectives, telecommunication in the rural areas, etc.
- *Provision for Valuing Assets*. These resources finance investment initiatives to value and protect in a sustainable way all historic monuments, Historical Preservation properties, protected sites in areas of historic preservation.
- *Provision for the Innovation for Competitiveness Programme Fund*. Resources allocated to strengthen and improve the capacities of regional governments and the private and public institutional mechanism for regional development and innovation.
- *Provision for the Support of Sub-national Management*. These resources are allocated to improve public management at regional, provincial and municipal level, through the strengthening of human ability and skills through training, technical assistance, recruiting professional qualified staff, purchasing equipment and ICT development.
- *Provision of Sanitation*. The resources are allocated to sanitation and drinking water systems.
- *Provision for Solid Waste*. These resources are allocated to investment initiatives related to the management and disposal of solid waste, drawing up diagnostic studies and programmes to re-use waste matter.

Hence, even if Chile is a unitary state with territorial divisions, a decentralisation process in terms of local governments ensuring service delivery and economic, social and cultural development has taken place in recent years. Both the regional and municipal levels of government play an active role in this task.

Multi-level co-ordination

Multi-level co-ordination is fundamental to attain regulatory goals. As an important component of co-ordination, better communication between levels of governments may help prevent conflicts and ineffectiveness. Making information available reduces inefficiencies and duplication of regulations, providing a sound legal framework. In addition, co-ordination also helps in sharing good practices and in spreading the benefits of leading regulatory practices. Co-ordination affects not only the relationships between the different levels of government (vertical co-ordination), but also the mechanisms in place among different institutions at the same level (horizontal co-ordination).

Box 8.2. **National support to develop regulatory policies at the sub-national level**

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. 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), *Better Regulation in Europe: United Kingdom*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084490-en; and Better Regulation Delivery Office (2014), "Delivery Plan 2014-2015", Department for Business, Innovation and Skills, April, London.

Even if Chile is a unitary country, the implementation of regulation and enforcement and compliance with the current legal framework are affected by relationships among the various levels of government. Preparation of regulations at municipal level is also a potential area of conflict. Some institutional arrangements and provisions in different legal instruments take into consideration the need for regulatory co-ordination among the different levels of government in Chile. Law No. 18.575 that establishes the Constitutional Organic Act for the Administration of the State sets out that "the institutions of the State Administration have to accomplish their responsibilities in a co-ordinated manner and should tend to act in unity, avoiding interference in or overlap of functions". In practice, there are challenges to be faced here. Municipalities have the autonomy to issue their own municipal regulations and authorisations which can have an impact on economic activity and entrepreneurship. In some regulatory areas, such as on the environment, municipalities have the authority to regulate and issue environmental regulations. Co-ordination with the Ministry of Environment and the central administration is not always easy and fluid, as local authorities may come up against environmental priorities and challenges that may not be shared by the central government.

Article 10 of Law No. 18.695 on the Organic Constitution of Municipalities establishes that municipalities and municipalities and the public services in their territory should be should co-ordinate with each other by direct agreement. If they fail to reach an agreement, the provincial governor can request that co-ordination. Co-ordination, however, should be achieved without affecting the responsibilities and functions of all the different institutions. Law No. 18.695 also establishes that the mayor must co-ordinate the functioning of the municipality with the central administration institutions and also co-ordinate with the public services working in the municipality's territory.

However, co-ordination of the various actors and policies in the regional and municipal governments is a major challenge for the system. There are currently no institutional arrangements that ensure co-ordination for regulatory matters in Chile, neither driven by the central government nor by the local authorities. The regional government still does not have enough institutional strength to manage and co-ordinate a common strategy for the region that draws the various agencies and actors together. Municipalities sometimes also lack capacity and resources to design good regulatory interventions. For example, intendants sometimes learn about projects to be carried out by a national agency in their region only when these are about to be implemented. This situation affects the capacity to provide a coherent framework for implementing regulations.

Assessment and recommendations

During the implementation of regulatory quality in Chile co-operation, co-ordination and dialogue with lower levels of government should be promoted including the support from the central government to develop capacity in regional and municipal governments.

Even if Chile is a unitary country, local governments have specific regulatory responsibilities that require co-ordination and coherence, so regulatory frameworks do not become barriers to businesses and citizens. It is therefore important that local governments develop strategies and policies for regulatory quality with help and support from the central government. When needed, they should also be able to implement tools for regulatory quality, but this requires a sense of alignment with what strategically the country wants to achieve. For instance, many OECD countries have promoted better delivery at the local level, and this means that substantial efforts have been made to ensure that local governments fully support such goals.

This could also require a formal mechanism or platform to be set up where the central and local governments can discuss a common regulatory reform agenda that could incorporate the identification of priorities, but also the gaps that local governments might be confronted with. Such a platform would help to make commitments and ensure that local governments promote good regulatory practices. Several OECD countries have made formal arrangements to discuss regulatory reform among levels of government and to identify priority areas and coherence that might help to improve the regulatory environment of the country.

The current multi-level regulatory governance structures in Chile might help in achieving those goals, as regions and municipalities have limited regulatory powers, as opposed to federal countries. These powers should however be clearly defined in order to

avoid overlapping or grey areas, and the central government should ensure that local governments participate in the promotion of regulatory quality at local level in matters within their jurisdiction. Constant training and guidance should be offered to lower levels of government to encourage them to achieve good regulatory practices. In some OECD countries (i.e. Australia, Canada, Mexico), for instance, the central government is the key in the support for local governments to develop capacity.

Any decentralisation process in Chile should include the promotion of regulatory quality and good practices at sub-national levels of government.

Chile is currently determining whether decentralisation should be introduced in the country and then if some additional responsibilities and competencies should be granted to lower levels of government. In any decentralisation process the good regulatory practices should be promoted, as sub-national levels of government might acquire new responsibilities involving the execution of regulatory powers. This means that regulatory quality should be promoted with even greater commitment, as local governments need to be in a position to take such obligations forward.

Taking into consideration that sub-national levels of government are generally not fully equipped, from the financial and the institutional points of view, to undertake additional regulatory functions, decentralisation should be carefully designed to ensure that regions and municipalities have enough resources to implement their new powers. If sub-national levels of government are granted more regulatory powers, they should adopt tools to avoid making decisions without evidence.

Notes

1. See www.subdere.cl/documentacion/caracter%C3%ADsticas-del-fondo-nacional-de-desarrollo-regional-fndr
2. www.bcn.cl/leyfacil/recurso/patentes-municipales.
3. Decree 2.385 sets out modified and systematised Decree-Law No. 3.063 of 1979 on Municipal Income.

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Chapter 9

Chile's regulation of territorial planning and construction permits

This chapter seeks to contextualise the current organisational and procedural regime for construction permit authorisation and management It can be part of the ongoing debate in Chile on improving territorial governance in general and on the urban development policy in particular. The chapter discusses the status of regulatory policies, institutions, and tools in the territorial planning and construction permits regime of Chile. It starts by analysing the current territorial governance in Chile and situating it vis-à-vis OECD countries. It describes both frameworks for urban and rural development, and afterwards, it discusses how modernising construction permits in Chile could be done by touching upon the normative and institutional structure, the city planning activity, and the management of natural risks in Chile. Finally, it recommends further steps to improve the high fragmentation and low co-ordination within the sector.

The chapter presents elements for considering streamlining and making more effective the construction permit regime, in close alignment with other ongoing reforms and policy initiatives by the Chilean Government. The objective is to provide the Government with an indication of the areas in which possible reform endeavour may be launched. The chapter also contributes to building comparative evidence and analysis by the OECD of international experiences and good practices among OECD countries in designing and implementing equivalent reforms.

The chapter is closely linked to the findings and key messages highlighted in the previous chapters of the review. It firmly draws from the *2012 OECD Recommendations on Regulatory Policy and Governance* presented in Box 2.1 (OECD, 2012a) and, in particular, Principle 10 which stresses the imperative for policy co-ordination and regulatory coherence. Accordingly, this chapter first outlines the relevance and rationale for modern governments to achieve a well-designed (i.e. transparent, effective and efficient) urban zoning and territorial planning policy, including efficient legal frameworks and procedures for construction permits. They play a crucial role in organising and developing modern societies and economies. The next section briefly recapitulates the current state of play of rural and urban policy in Chile. It does so by, on the one hand, drawing from recent OECD reviews and, on the other hand, making reference to the National Policy for Urban Development that the Government of Chile issued in 2013.

The last section mainly reports on the inputs and feedback that representatives of central and local governments as well as private stakeholders have contributed in the course of the OECD review. The key diagnostic messages from the questionnaires and the interview programmes organised by the OECD Team largely corroborated the in-depth assessment that the Chilean Government carried out when preparing the National Policy for Urban Development. They are fully in line with the assessment that this present OECD Review has conducted for administrative and regulatory governance; digital government and deployment of ICT in the public sector; and SME development.

Territorial and urban policy in 21st century world

The importance of efficient territorial and urban policies for modern societies and economies

The context characterising modern cities and the countryside is complex, multi-dimensional and dynamic. Territorial governance is crucial, as it heavily depends on how both urban and rural areas can guarantee agreed living standards; develop and prosper. Designing and managing efficient planning and zoning policies, including construction permit procedures, has acquired increasing relevance in the light of the challenges posed by rapidly evolving societies and the globalised economy. The exchanges between urban agglomerates as well as between a city and the rural areas surrounding it have intensified and deepened. The variety of those exchanges has also increased. There are, moreover, many more types of interactions nowadays than in previous decades, as a function of the economic and social texture of a given territory.

Territorial policy is increasingly considered by private sector investors and developers as a key element for investment decisions and economic growth reliability. The "business and investment climate" is determined by how public authorities and private actors interact in allocating resources and organising the territory and its

infrastructure. OECD countries are called upon to change their approaches to strategic planning and policy formulation in the light of the changed patterns of major state aid and payments transfers, as well as of changed tax revenues or debt re-financing channels (OECD, 2013a; 2014a:5; Clark, 2014).

Territorial governance is a major area of policy focus also from a social perspective. The social fabric is intimately linked to the inhabited territory. Significant demographic flows into urban areas (the so-called "urbanisation") or population ageing challenge established balances between city and rural contexts. This has a critical effect on local development. Social cohesion implies also working on social housing, on the management of migration flows and the promotion of remote or disadvantaged areas – all aspects to be included in a comprehensive territorial governance strategy.

Coping with such changes has become a pressing need for any country to improve the quality of life and security for people. Territorial and urban policy is one of the key leverages available to decision-makers at all levels of government to achieve both social and economic goals over time and on a sustainable basis. Through its territorial and urban policy, government can intervene to address social imbalances and promote social integration. It can also stimulate economic development by incentivising and exploiting regional comparative advantages to foster domestic and international competitiveness. Governments may use territorial and urban policy to ensure environmental protection standards and design effective risk management strategies against natural disasters or systemic threats. Finally, it can intervene to preserve and stimulate (local, regional, cultural) identities as well as the heritage.

This is likely to be achieved if governments pro-actively embrace a more "entrepreneurial" approach rather than limiting their role to managerial tasks. The relationships between national and regional or even local policy and regulatory frameworks are evolving. The national level often no longer suffices to determine successful business activities. While the latter may well be enabled or hampered by decisions taken at the higher level, the majority of attributes required for business-friendliness success can and are increasingly influenced by the action of local leaders at city level (Clark, 2014; OECD, 2007). An innovation-driven mode needs to kick in among public authorities shaping and managing territorial governance. This accounts for the impact by which direct and indirect costs of doing business and the efficiency of public service delivery result in socio-economic development (see Box 9.1).

Box 9.1 **Getting cities right**

Two-thirds of OECD residents (67%) live in urban areas of 50 000 inhabitants or more, and just under half (49%) live in metropolitan areas of 500 000 or more. The largest metropolitan areas have high levels of productivity (higher gross domestic product [GDP] per worker, higher wages) but the contributions that they make to national growth are due more to a growth in population rather than productivity.

The influence of cities goes beyond the region in which they are located. There is evidence that cities can "cash in" on the benefits of size by being tightly connected to their neighbours. By the same token, many economic, social and environmental challenges can best be addressed at the urban level.

Against this background, it is paramount that governments shift from:

- an "administrative logic", where cities are seen as administrative entities, solving problems within boundaries, even if the impact extends beyond, to a "functional logic", where cities are seen as functional economic areas, and solutions need to be adapted to the area of impact;

Box 9.1 **Getting cities right** (*cont.*)

- being "problem-driven", with a focus on issues such as air pollution, congestion, poor economic performance, failing neighbourhoods, to being "strategic", with a focus on opportunities (e.g. how cities of all sizes can grow and contribute to national policy objectives);
- a "narrowly defined urban agenda" (e.g. national urban policies limited to one or two urban issues, such as infrastructure provision or revitalizing distressed neighbourhoods, to an "holistic approach" (with national government awareness of the full range of policies that can profoundly shape urban development);
- a "silo approach", with sectoral, fragmented responses to specific challenges (e.g. transport, land use, water, waste, economic development), to "integrated approaches" to cross-cutting urban challenges, based on co-ordinating economic, social and environmental policies (e.g. improving the quality of life and citizens' well-being, and green growth strategies).

Source: OECD (2014c), *OECD Regional Outlook 2014: Regions and Cities: Where Policies and People Meet*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264201415-en; ; OECD (2015a), *The Metropolitan Century: Understanding Urbanisation and its Consequences*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264228733-en.

Systemic challenges to multi-level governance of public investment nonetheless exist for governments embarking in such reforms. OECD (2013a) evidence suggests that such challenges may be classified into:

- *Co-ordination:* while there is mutual dependence across levels of government, cross-sector, cross-jurisdictional and inter-governmental co-ordination are difficult in practice. The constellation of actors involved in policy design, public investment allocation, management and audit is large and their interests need to be aligned;
- *Capacity:* empirical evidence suggests that public investment and growth outcomes are correlated to the quality of government, notably at the local level. Recurring capacity bottlenecks particularly affect strategic planning, co-operation with private actors, long-term impact and risk assessment, capabilities for public procurement, etc.; and
- *Framework conditions:* these refer to the recurrent mismatch between budgetary frameworks, procurement requirements, regulatory and fiscal systems across jurisdictions.

To tackle these challenges and avoid dis-functionalities, the OECD issued a *Recommendation on Effective Public Investment across Levels of Government*.[1] In this context, "administrative burden reduction is important at all levels of government. In some cases this can require the revision and simplification of formalities such as licences, permits and authorisations that are required for the development of public investment projects at the different levels of government (i.e. construction licences, transit permits, expropriations, among others)" (OECD, 2014a, p. 24).

The role of construction permits in territorial governance and policy

Construction permit procedures are an integral part of territorial governance and have become a critical factor for achieving social and economic objectives. The legal, organisational and procedural framework related to construction permits constitutes an important governance element, as it sits at the crossroad of several lines of actions by governments. Reforms of construction permit procedures can in fact significantly affect the capacity to plan and deliver territorial development; or achieve energy-saving targets (for instance through more efficient buildings) – just to name but two strategic policy objectives. On the other hand, construction permits often also constitute a significant source of revenue for local authorities – both directly and indirectly, which needs to be rationalised and made proportionate (see Box 9.2).

Box 9.2 **What is a construction permit and what is it for?**

A construction permit implements an administrative decision to protect minimum safety and health standards and property rights. As a rule, the permit is granted by public authorities upon an explicit application, following publicly announced administrative procedures, and on the basis of both the presentation of a specific building plan and the existence of a preliminary zoning document.[1] The permit grants legal permission to start construction of that specific building project. They are typically required for new buildings; structural additions; renovations; demolitions; temporary buildings; electrical, plumbing, heating, ventilating systems, etc. Hence, the permit is the final administrative authorisation to start work on an actual building project, and one of the last steps before actual construction work starts.

Works for which no permit is required will generally be rather limited. For this reason, the governance of a construction permit is likely to affect the overall economic development of a given territory. At the same time, building permits usually allow municipalities or relevant local authorities to enforce a building code that has been adopted as part of a broader construction law.

The regulatory purpose of a building permit is primarily to enforce important policy objectives enshrined in construction law, mainly focusing on maintaining minimum safety and health standards, and ensuring that construction does not adversely affect third parties. Building permits are also used by local authorities to verify that a new construction fulfils broader urban planning and zoning requirements.

1. Zoning is one element of construction, infrastructure and territorial development regulation. It regulates the location and use of certain types of buildings within a city or a given territory.

Source: OECD (2015b); IFC (2009)

Getting construction permit procedures right is paramount. If excessively complex or burdensome, the procedure inverts what is the actual main objective of building permits – to ensure the health and safety of the community. Construction permits form part of those public services that are delivered by public authorities on the territory, and which have a direct impact on both the actual efficiency of the procedural arrangements and the perception that economic operators have thereof.

Many entrepreneurs attach particular weight to the type and quality of construction regulation before taking investment decisions – both in transition and advanced economies. If designed well, construction permit reforms stimulate construction work, whose benefits extend beyond the sheer increase in number of workers employed in the sector. Construction related materials and services are purchased, often from local suppliers, local jobs are created, thereby generating greater spending and purchasing in

the territory. It has been estimated that for every 10 jobs directly related to a construction project, another 8 jobs are created in the local economy (PWC, 2005).

Policy makers need to strike the right balance between the cost imposed on private operators and the real benefits in safety and health standards that the permit is expected to guarantee. Hence, it is fundamental that any reform of the construction permit legal and procedural framework be linked to an all-embracing public service and policy considerations. Over the years, the World Bank's *Doing Business* reports have consistently emphasised the extent to which building permits continue to be a significant obstacle to investment and business formalisation across economies. There is general evidence that complex, costly, bureaucratic, and discretionary building procedures are associated with higher levels of informality. Corruptive practices can nest beyond these procedures and take massive proportions within issuing and enforcement agencies, adding risks to the community in terms of safety as well as significant costs to investors (IFC, 2009).

Territorial governance in Chile: towards full modernisation

This section consolidates main findings presented by two major territorial governance reviews that the OECD issued in the last couple of years. The two studies on rural and urban policies build on a longer standing series of reviews and case study analyses (OECD, 2009a; 2013c; 2013d; 2014b).

Rural policy in Chile between past and future

Chile is a fast-growing country with dynamic social progress. As a natural resource intensive economy,[2] Chile is confronted with unique competitive advantages as well as typical challenges such as exposure to the volatility of international commodity prices, potential limits on increased production, and potentially low entrepreneurial and innovative activity. Because of its geological structure and its extension over various climate and morphologies, the country is also subject to potentially systemic natural risks such as earthquakes, volcanos, flood and drought. Overall, however, Chile has been remarkably successful in turning its natural resource endowments into a generator of growth and modernisation. Chile has experienced some of the highest growth in Latin America – from USD 3 000 in 1982 to USD 19 000 in 2012. Since 2011 Chile has become the economy with the region's highest GDP per capita (OECD, 2013c).

Chile's particular geography brings both challenges and benefits, leading to a concentration of economic activities and settlement patterns in a few areas. Chile is over 4 300 kilometres long, but no more than 240 kilometres wide. This creates a challenge for developing and managing connections among individuals, firms and regions throughout the country, and for delivering goods and services throughout the territory, especially in remote areas. Moreover, accessibility and connectivity to international markets also represent a challenge for many regions. Compared to other parts of Latin America, Chile's remoteness and its particular geography have been less of an impediment. In Chile, macroeconomic stability and resilience have attracted foreign capital and business activity from neighbouring countries that also experience similar poor international connectivity resulting in pockets of strong economic activity (OECD, 2013d, p. 13).

Despite the significant weight played by the primary sector in the economy, a fully-fledged rural development policy is still to be conceived in Chile. Little focus has been put on providing robust bases for industries such as mining, agriculture, forestry and

fisheries at the regional level. More than half of Chilean regions with high degrees of rurality record GDP per capita below 75% of the national average. The OECD review comes to the conclusion that Chile's current official definition of rural areas is not suited to a modern rural economy (see Box 9.3).

There is no integrated, strategic territorial approach to the development of the country's rural regions, which takes account of the significance of urban and rural interactions, differentiates among different types of rural areas, and finally recognises and defines multiple types of rural areas. Instead, there are several sectoral programmes for those activities most common in rural areas, primarily natural resource-based activities and agriculture, as well as specific measures for the delivery of public services in rural areas. Given the emphasis of the current approach, which associates rural with disadvantaged areas, rural polices now put a strong emphasis on providing subsidies to the disadvantaged, not because there is any great expectation that they will be able to use the support to improve their condition but largely out of a sense of social cohesion.

The challenges are accentuated by structural governance problems linked to the allocation of competences and on the fragmentation of decision-making. Rural areas also face systemic difficulties as a consequence of the weak degree of autonomy and mandate conferred to sub-national governments. Chile is a highly centralised polity, which leads to rural development policies being designed and implemented in a top-down manner, at times without due consideration for territorial idiosyncrasies, priorities and realities. Despite this centralisation, the national public actors involved in rural development have proliferated to a point of disproportionate institutional fragmentation. This results in overlapping programmes and co-ordination failures in rural policies.

Box 9.3. **OECD Key Recommendations on Chile's rural policy (2014)**

Revising the current rural definition

- To design and implement an effective policy to strengthen rural areas, Chile must formulate a more appropriate definition of its rural territory.
- The revised definition should not classify the entire territory as simply urban or rural; it should differentiate amongst various types of rural areas and recognise mixed areas where there are strong urban and rural interactions.
- The review proposes two alternative definitions. The first is more precise, but it is more difficult to compute and requires the availability of very detailed data, making it more difficult to implement in the short term. The second is less precise but easier to compute. Data for the second alternative are already available.
- Use of a revised definition reveals rural patterns commonly seen in other OECD member countries.

Adopting a modern rural development policy

- There is a need to integrate the various sectoral policies into a comprehensive and co-ordinated national rural policy addressing five key dimensions: social, economic, environment, migration and governance.
- The new national policy should contain a broad approach that allows line ministries to play a distinct role in rural development reflecting their unique competences, but within an overarching strategy for better integrating the actions of the wide range of rural programmes.

Box 9.3. **OECD Key Recommendations on Chile's rural policy (2014)** (*cont.*)

- The national rural policy should also contain a narrow (regionally sensitive) approach to rural policy, given Chile's diverse geography and the presence of remote rural regions. This would give a single agency a comprehensive set of policy tools that can be applied in a tightly co-ordinated way to better address the needs of remote rural areas.

Making government a stronger force for rural progress

- An institution with a clear leadership role on rural issues is needed to better integrate national rural policies and upgrade the concept of rural development at all levels.
- Increasing rural municipal own-source revenues, e.g. by reducing or phasing out property tax exemptions, and enforcing the payment of municipal business licenses, can help local governments to carry out their devolved responsibilities.
- Incorporating additional variables that consider the cost of providing public services in thinly populated areas in the National Fund for Regional Development (FNDR) *ex ante* social profitability assessment can help reduce the disadvantages of rural localities when competing for FNDR resources.

Source: OECD (2014b), *OECD Rural Policy Reviews: Chile 2014*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264222892-en.

Chile's policy and frameworks for urban development

Chile has urbanised rapidly in the last 60 years. The country registered almost 40% increase in urbanisation – from approximately 60% in the 1950s to almost 90% today. Its urban structure consists of 26 functional urban areas (FUA) which already, in 2012, held 77% of the national population. Of these 26 areas, 15 can be classified as small urban areas (i.e. they have less than 200 000 inhabitants) and contain 11% of the total national population. There are also eight medium-sized urban areas (between 200 000 and 500 000 inhabitants), where 15% of the population resides. Valparaíso and Concepción are considered metropolitan areas (up to 1.5 million inhabitants) and host 11% of the population, while Santiago is the only large metropolitan area, hosting by itself 39% of the national population (OECD, 2013d).

Quality of life in Chilean urban areas has increased but there still are margins for economic improvement compared to other OECD countries. The quality of life in Chile has improved significantly over the past decades and, in general, Chileans report greater satisfaction with their lives than the OECD average. However, Chile ranks lower than many other OECD members on a variety of urban-related topics including income, housing, jobs and the environment (OECD, 2012b). Economic, demographic and spatial trends have a significant impact on Chilean cities (see Box 9.4).

Box 9.4 Chile's strong urbanisation process has not levelled out income inequalities

In Chile, there is a strong correlation between inequality among people and inequality across space. While economic growth is the pre-condition for prosperity, it also leads to greater consumption of urban goods and services, notably housing. This in turn demands growing amounts of serviced residential land and infrastructure such as roads and motorways, hospitals and schools, placing greater pressure on infrastructure and service delivery. Food, goods and energy consumption increase, generating higher volumes of waste and emissions.

A longer-living population and an increased elderly population contribute to more complex demands on housing, as well as on public services, from health services and transport to recreational facilities. Finally, income inequalities in urban areas can result in strong socio-spatial segregation and potential social tensions. The impact of these trends may be magnified in metropolitan areas, given their population density and congestion, capacity for wealth creation, and more diversified economies.

Source: OECD (2014b), *OECD Rural Policy Reviews: Chile 2014*, OECD Publishing, Paris, p. 32, http://dx.doi.org/10.1787/9789264222892-en.

In this respect, Chile has followed OECD countries' trend of territorial development, which has tended to emerge in metropolitan regions, highlighting the need for strategic thinking and trade-off management. OECD evidence suggests that there is a positive correlation between metro-regions' size and income, especially when they concentrate over 20% of national GDP. However, the growth capacity of metro-regions should not be overestimated as they are not always synonymous with success. An OECD study provided evidence that this correlation becomes negative at around 6-7 million – although this threshold varies from country to country, suggesting diseconomies of agglomeration due to congestion and other related costs. The combination of economic advantages and difficulties posed by the rise of metro-regions presents a number of strategic choices or dilemmas that confront policy makers. Among such strategic choices are issues related to managing spill-overs from metro-regions; coping with trade-offs between boosting economic dynamism and ensuring quality of life; and balancing out the role, rights and duties of public and private actors (OECD, 2006).

The governance architecture for urban development is outdated and no longer fit for purpose. One negative feature is the lack of flexibility. Chile's regional and local land-planning instruments – the Regional Plan for Urban Development (*Plan Regional de Desarrollo Urbano*, PRDU) – and three types of Regulating Plans (*Plan Regulador Comunal*, PRC; *Inter-comunal and Metropolitano*, PRI / PRM) were designed in the 1960s, and at least in the case of Regulating Plans, are based on legislation dating from the 1930s. The complex administrative procedures for approving or amending Regulating Plans, and the number of documents that are required when submitting them, result in lengthy and involved administrative and political processes. This often renders the new, renewed, or amended plans obsolete upon approval.

A further negative feature is the lack of co-ordination of policies, institutions and procedures both at central level and among municipalities. Chile has embarked on the significant undertaking of establishing a National Regional Development Policy, a National Urban Development Policy and a National Rural Development Policy. However, the success of these policies may hinge on Chile's capacity to address a lack of strategic and institutional co-ordination in territorial matters. Institutional fragmentation is a diffused challenge in Chile. Ministries tend to act within their area of expertise without

co-ordinating urban policy initiatives or interventions, potentially without adequate consultation on sub-national needs. Co-ordinating urban development efforts among ministries, within a ministry or between a ministry and its regional representative, can be a challenge (see Box 9.5).

Administration is fragmented at sub-national level as well. Each municipality within a metropolitan area is administered independently, without a mechanism to take into account the over-arching economic and productive unit. Policy and service integration in a functional area is hampered by differences in objectives, capacity and constraints, and precludes the efficiencies and synergies obtained through co-operation and the building of scale.

Box 9.5. **Primary actors in the urban development process at the central government level**

One of the factors inhibiting greater coherence and co-ordination may be the fragmentation of territorial responsibility between the Secretariat for Regional Development and Administration within the Ministry of Interior (SUBDERE), which supervises regional and rural development, and the Ministry of Housing and Urbanism (MINVU), which supervises urban development.

However, the institutional landscape governing territorial policy is more complex and involves several other institutions.

- The Ministry of Housing and Urbanism (MINVU) has traditionally been focused on addressing the urban-housing deficit and in providing social housing. At the same time, through its Urban Development Division, it has the primary responsibility for urban planning at the national level. MINVU, mostly through its regional secretariats (*Secretarias Regionales Ministeriales de Vivienda y Urbanismo*, SEREMI), has a significant level of influence on Chile's land use plans. It is in charge of developing regional, inter-municipal and metropolitan plans, as well as overseeing the development of municipal land-use plans. The ministry currently has four main priorities: reconstruction after the February 2010 earthquake, amendment of the Housing Policy, eradication of slum areas and developing the new national urban policy.

- The Ministry of National Assets (*Ministerio de Bienes Nacionales, MBN*) recognises manages and administers the fiscal patrimony of the nation. It administers or directly owns more than half of the fiscal properties across the national territory, both in rural and urban areas, sometimes allocating land through public bidding. The ministry keeps record and updates the national cadastre. It develops, in co-ordination with other state agencies, policies about the use and incorporation of the fiscal patrimony to promote a sustainable economic, social and cultural development of the country. MBN SEREMIs are also at work to implement relevant policies.

- The Ministry of Transport and Communications (MTC) is in charge of transport policies, including enforcing vehicle emissions, granting bus route concessions, overseeing public and private operating companies, developing street sign standards and vehicle circulation bans. The MTC is the link between the government and transport-related enterprises such as the State Railways Company and Metro S.A. Through its regional secretariats (SEREMI), the MTC leads the implementation and evaluation of the Impact Assessment System for Urban Transportation Systems (SEISTU), which aims to mitigate negative impacts on the transportation system associated with building projects.

- The Ministry of Public Works (MOP) is in charge of planning, designing, building, expanding, repairing, maintaining and operating the national public infrastructure system, including roads, highways, bridges, tunnels and airports. Within its legal

Box 9.5. **Primary actors in the urban development process at the central government level** (*cont.*)

powers, the MOP is responsible for the implementation of the Law on Private concessions and for controlling and supervising the private concession scheme on infrastructure. Finally, the Water Directorate under the Ministry of Public Works is responsible for the management and administration of water resources and granting property rights for water use.

- The Ministry of Environment (MMA) was created in 2010 to replace the former National Environment Commission (CONAMA). The MMA participates in the strategic environmental assessment of urban and transport policies and plans. It is responsible for the administration of the system of environmental impact evaluation (SEIA) and approving environmental impact studies and declarations (including those for land-use plans, real estate projects and transport projects). The SEIA evaluates and certifies public and private initiatives including those related to: urban development, tourism, airports, railways, highways and public roads that may affect protected areas, and ports. In addition, the different land-use plans (regional, inter-municipal/metropolitan and municipal) are required to undergo a Strategic Environmental Assessment supervised by the MMA.
- The Housing and Urban Development Agency (SERVIU) is an executive unit under the MINVU that deals with the construction and maintenance of urban roads and intervenes as an inspection's body to oversee private construction works, amongst other things. It has played a central role in implementing public transport corridors like Transantiago. SERVIU offices are established in each of Chile's 15 regions.
- The Department of Transportation Planning (SECTRA) is a technical agency under the MTC responsible for the planning process of the urban transport system in Chile's cities. It advises national and regional authorities in the decision making and management of investment projects and initiatives that the process generates. SECTRA is responsible for developing and monitoring Transportation Master Plans. These are a set of projects and initiatives to meet the present and future mobility needs of the population, based on a holistic view of the city.

Source: OECD (2013d), *OECD Urban Policy Reviews, Chile 2013*, OECD Publishing, Paris, p. 144, http://dx.doi.org/10.1787/9789264191808-en.

As a result, urban challenges in Chile are distinctively multiple in nature, as highlighted by past OECD reviews. Unresolved issues in Chile's urban development are quite well known at present. They include rising inequality, increasing poverty, the potential impact of the housing policy on labour market mobility, and environmental sustainability concerns linked primarily to congestion – air and water treatment quality standards, preservation of green areas in cities and waste management.

Similarly to the rural policy, the current urban development policy has failed to meet minimum criteria to fulfil the policy integration and regulatory coherence rationale (OECD, 2012a – in particular Principle 10). On the basis of such appraisal, the OECD issued a series of specific recommendations to promote urban development in the country (see Box 9.6 for a sample thereof).

Box 9.6. **OECD key recommendations on Chile's urban policy (2013, summary)**

Address challenging urban trends

- Develop a single and clear definition of urban versus metropolitan areas to more effectively guide policy and decision makers, ensuring that growth-oriented initiatives and policies address both metropolitan areas and medium-sized and small cities.

Strengthen the urban frameworks, as well as the sectoral policies and their integration in areas such as:

Urban development and management

- Streamline the PRC/PRI/PRM[1] approval process.
- Build greater coherence in territorial policy at the central government level by placing responsibility for territorial development – regional, urban and rural – under one ministry.
- Build coherence among urban planning and management documents, for example by better defining their role and interaction, and by re-evaluating them for overlap.
- Give sub-national governments (regional and local) a greater role in shaping their development process.

Land-use planning

- Prioritise infill development, and/or the development of vacant and underutilised lands within urban boundaries.
- Establish national guidance on principles of urban form to guide cities in shaping the decisions made by the private sector.
- Create a national-level definition of natural hazard zones and specify the conditions for development and types of land uses applicable to these zones. This should be accompanied by a national standard for mapping natural hazard zones and provide national technical assistance to municipalities carrying out the mapping.

Housing policies

- Improve the targeting of housing policies to those most in need, and provide social housing in centrally located areas.
- Build stronger co-ordination between housing and other urban development policies (e.g. infrastructure, public transport and social development).

Public transport policies

- Enhance public transport service by improving co-ordination between the different collective transport modes; physically extending services; and giving public transport traffic priority over other traffic at intersections and on roads.
- Introduce parallel measures to make automobile use more efficient and/or to reduce the use of cars by individuals, and promote public transport and infrastructure facilities.
- Actively involve local institutions early on and throughout the design and development of transport-related initiatives as a means to match transport initiatives with specific local needs and overall urban dynamics.

Box 9.6. **OECD key recommendations on Chile's urban policy (2013, summary)** (*cont.*)

Environmental policies

- Broaden the mandate of the Strategic Environmental Evaluations (EAEs) to evaluate the overall impact of urban growth on environmental performance and quality of life.
- Establish pollution reduction plans across administrative boundaries, taking "air-sheds" into account.
- Ensure a more integrated approach to watershed management to maintain the already good overall water provision and quality in Chilean cities and to reduce variations among different municipalities.
- Better manage the impact of urban expansion on flooding, in part through a more comprehensive approach to managing storm water drainage and also through increasing the permeability of road surfaces.

Reconsider its urban governance architecture with an eye toward an institutionally based, heterogeneous approach appropriate to city size and capacity. This includes:

- Establish institutionally based metropolitan and other urban governance models
- Build sub-national capacity
- Build a strategic vision for territorial development that encompasses urban form

1. Plano Regulador Comunal (PRC); Plano Regulador Intercomunal (PRI); and Plano Regulador Metropolitano (PRM).

Source: OECD (2013d), *OECD Urban Policy Reviews, Chile 2013*, OECD Publishing, Paris, pp. 20-22, http://dx.doi.org/10.1787/9789264191808-en.

The government of Chile has taken up the challenge and designed a comprehensive National Urban Development Policy (PNDU). In March 2014, it officially issued a comprehensive approach, whose main principles, objectives and features have been consolidated in a four volumes (Giménez and Ugarte, 2013). The policy results from a careful consideration of the historical evolution of previous national attempts at governing the urban territory and its development as well as from reviewing international experiences.[3] It notes that a long-term strategy and coherent action programmes that pivot around citizens and the quality of their lives cannot be delivered by merely assembling a set of laws establishing norms and requirements for urban buildings and infrastructure.

Accordingly, the policy spells out objectives on the following five areas:

- *Social integration:* Cities should be inclusive places, where people can live, feel protected, and easily benefit from such amenities as public space, education, health, work, safety, social interaction, mobility and transport, culture, sport and leisure. Social integration should be a national priority.
- *Economic development:* Cities should be drivers for economic development and sources of innovation, entrepreneurship and job creation. Development is a comprehensive concept and includes social responsibility and sustainability, while harmonising growth and investment with externalities that development projects can cause.

- *Environmental balance:* Human and productive settlements should be developed in a sustainable manner, in balance with the natural environment, and recognising and valuing the systems in which they operate.
- *Identity and heritage:* Cities and population centres should consider identity of place and inhabitants, geographical diversity and the cultural richness provided by different communities, towns and villages. Identity also means "identification", in that communities must feel they are reflected in the characteristics of where they reside.
- *"Institutionality" and governance:* It is important to promote institutional re-organisation both in the central administration and at the self-government level in order to achieve integrated and decentralised decision-making on issues pertaining to territorial and urban development. This latter strand of objectives supports the implementation of the principles and assumptions of the entire policy.

The Government has taken the first steps to implement the new policy, for instance by creating the National Urban Development Council (*Consejo Nacional de Desarrollo Urbano*, CNDU).[4] The CNDU is a permanent advisory body of the President of the Republic charged with making proposals for reforms and verifying progress in the implementation and enforcement of the PNDU. Specifically, CNDU's main tasks are:

- to explore sectoral policies on matters that have a bearing on the development of cities and territory and to make appropriate proposals;
- to study the national legislation applicable to urban and regional development and propose reforms and improvements that are relevant in both the legal and institutional framework as functional;
- to convene regional roundtables to ensure that regional realities are duly taken into account in the proposals made by the CNDU.

To achieve this, the CNDU is organised around working groups covering the specific subject matters promoted by the PNDU.

Modernising construction permit procedures in Chile

The scope of the PNDU envisaged by the Government and the related measures are based on a broad and critical diagnostic work that has addressed several areas at the various levels of government. The Government (Giménez and Ugarte, 2013) categorised the types of challenges Chile was facing sets of issues, including housing deficit and provision of basic services; inequality and socio-spatial segregation; new projects and sustainability; caring for the environment; and heritage protection. In addition, the Government has focused on the institutional, organisational and procedural arrangements for city and territorial government – both from the perspective of the central regulators and public administration, and the sub-national authorities. Box 9.7 below recapitulates the main issues pertaining to territorial development.

Box 9.7. **Main challenges related to the public governance of urban development**

The diagnostic review of the government devotes significant attention to the institutional and legal framework underpinning urban planning and development in modern Chile. It comes to the conclusion that the public system governing these policies is characterised by a series of fragmented and reactive decisions that are centralised and taken with insufficient engagement of stakeholders and the citizens.

The government acknowledges that the challenges are structural and they cannot be resolved by voluntary punctual co-ordination efforts.

The government has focused in particular on the following challenges:

The normative and institutional structure

The current legal basis stretches over a very wide, complex and dispersed set of norms which spread into several sectoral codes and laws with more or less direct impact on urban development. Taking into account the main organic constitutional laws, ordinary laws, legislative decrees, law-decrees and supreme decrees, the legal framework amounts to more than 30 legal acts besides the General Law of Urban Development and Construction.[1] Many of those legal documents overlap or even are contradictory to each other and require adjusting and updating consolidation. At present, the many exemptions and exceptions added over time to specific legal provisions make the system very opaque, discretional and arbitrary.

Similarly, the notion of what constitutes "urban" is defined differently in different legal sources and the competences related to that "set of notions" are allocated throughout a dozen institutions and departments, most of which have a clear centralising and centralist bias. Such bodies are present at all levels of government:

- At the central level, a simplifying overview is provided by Box 9.5 above;
- At the regional level, the State administration is organised around the functions of the Regional Governments. The latter are headed by *Intendentes,* who are the direct representative of the President of the Republic in each of the 15 regions. *Intendentes* lead the regional government according to guidelines provided directly by the President. Councils (*Consejos regionales*, COREs) supervise the *Intendentes'* duties and approve the Regional Plan for Urban development (*Plan Regional de Desarrollo Urbano*, PRDU) as well as the Inter-Communal or Metropolitan Master Plan (*Plan Regulador Intercomunal o Metropolitano*, PRI or PRM), as proposed by the SEREMIs. In addition, communal master plans (PMC) need to be submitted to CORE's approval if they are not included in existing PRI or PRM.
- At the local level, the main municipal bodies are the *Asesoría Urbana* and the *Dirección de Obras Municipales* (DOM). While the first is the department competent for the planning, DOM is the one responsible for, among other things, implementing the PRC, and issuing the construction permits.

Such proliferation of institutional actors and dispersion of competences is reflected in the difficulty to proceed to relatively simple interventions to enhance the urban landscape and spaces – for instance hiding aerial cable, constructing pedestrian walkways or merely relocating posts.

City planning activity

City planning activity has accelerated since 2002 but current territorial planning instruments cover only 68% of Chile's municipalities. In many parts of the country, municipalities have not gone beyond the stage of designing the zoning plans without adopting them. Also where such plans are in force, their implementation is problematic because the plans do not allow smooth urban development. They are often unable to effectively link different elements such as land use to transport or public works to funding systems. Investment decisions for housing and infrastructure, especially on the outskirts of the large cities, are often implemented outside the planning structure.

Box 9.7. **Main challenges related to the public governance of urban development** (*cont.*)

The government notes that despite the design and adoption of PRCs being a competence of municipalities, some 54% of the ones currently in force and 77% of those under preparation have been formulated through the IPT Programme of MINVU at the central level, which illustrates the significant extent to which municipalities depend technically and financially on the State.

In addition, the time necessary to formulate or modify zoning plans is extensive, taking on average over six year.

Management of natural risks

Chile is probably the country with the highest risk of natural disasters – volcanoes, seismic activities, tsunami, flood, droughts-. In terms of territorial governance and planning, Chile is extremely poorly equipped. There are no official statistics on the risk of natural catastrophes in the various parts of the country. Since the earthquake and tsunami of February 2010, a number of risk analysis projects have been undertaken by SUBDERE and SERNAGEOMIN. Several operational proposals were made by the dedicated Earthquake Commission 2010.[2] However, the process of comprehensively upgrading the risk management system at the national level is far from being finalised.

1. Those main legal acts are listed in Annex 2 to Giménez and Ugarte (2013, Vol.3).

2. Earthquake Commission (2010), 30 proposals relative to the Earthquake of 27 February 2012.(30 Propuestas Relativas Al Terremoto 27 de Febrero 2010, 16 de Junio 2010.)

Source: (Giménez and Ugarte, 2013, Vol.3, Chapter 8).

The construction sector is significant within the Chilean economy. In 2014, it constituted about 8% of GDP; 8.9% of total employment; and total investment in construction was 14.9% of GDP.[5] The construction sector also accounts for 33% of negative impacts caused to the environment (mainly through residual or discarded inert material, only in part waste). Between 2003 and 2010, the sector was at the origin of 55% of the overall investment in the national economy. Approximately 74 000 dedicated businesses were registered in the sector in 2010, of which 57% were SMEs, generating some USD 30 billion turnover in 2012.[6]

The governance of construction permit procedures fits into the institutional and policy background for territorial policy just outlined. Overall, it is also characterised by high fragmentation and low co-ordination as well as slow planning and delivery performances relative to a dynamic economic and social context. The elements included in this section combine considerations on the causes of inefficiencies and drivers for possible change and describe initiatives that the government has recently undertaken or is currently considering to address the challenges. They are presented on the basis of the three main sets of challenges identified by the Government in the diagnosis prepared for the formulation of its PNDU, namely:

- Normative and institutional structure;
- City planning activity; and
- Management of natural risks

Normative and institutional structure

The main legislation governing urban planning and construction in Chile is the General Law of Urban Development and Construction (*Ley General de Urbanismo y Construcciones, LGUC*) and its bylaw (*Ordenanza General de Urbanismo y Construcciones, OGUC*). These two acts also regulate the process for applying for and issuing construction permits (Box 9.8 below).

Within each municipality, a Department of Municipal Works (*Dirección de Obras Municipales, DOM*) is in charge of ensuring compliance with the regulations established by the LGUC and the OGUC, as well as the rules set in urban regulatory plans (at the communal level). Additionally, DOMs are responsible for granting construction and planning permits within a commune. There are 346 communes in Chile, and 345 municipalities, there are 17 municipalities that do not have a DOM. When there is no DOM in a municipality, the authority over construction and planning permit issuance lies with MINVU's regional secretariats.

Within each commune, DOM is in charge of supervising construction works and their compliance with the plan and specifications submitted with the construction permit application. DOMs have the power to order the suspension of works for reasons established in article 5.1.21. of the OGUC, such as projects being built without a permit, or if safety measures are not being taken.

Box 9.8. The construction permit process in Chile

The LGUC establishes that construction and planning permits must be requested by the real estate owner. Each project that requires a construction permit must be developed by professionals who are licensed to practice. They can be architects, civil engineers, construction engineers, or main contractors (*constructores civiles*).

In order to apply for a permit, the owner (or a licensed professional in her/his behalf) must submit a series of documents to the corresponding DOM, including forms, plans, specifications, and reports. The list of documents that needs to be submitted for each type of permit is specified in OGUC. Some permits require an independent examiner (mandatory for public buildings, optional for private projects), while others require a structural calculations project examiner.

DOM has 30 days to review an application (for new building permits), 15 if the application includes an independent examiner report. If there are any observations to a project, DOM must issue a single report containing all remarks. The applicant has 60 days to address those observations, and re-submit amended documents. DOM has 30 days (or 15, depending on the type of permit application) to do a second revision. During these revisions, DOM must check the compliance of the project solely with planning regulations. Once the application is approved and municipal fees are paid, DOM has 3 days to issue a construction permit certificate, which allows the applicant to start construction work. If DOM fails to comply with legal deadlines to review an application, the applicant may file a complaint at MINVU's regional secretariat.

Municipal fees for building and planning permits are set out in article 130 of LGUC, and are usually a percentage of the property valuation or building costs.

Once construction work is finished, the applicant submits an acceptance request. DOM carries out a final inspection, and issues an acceptance certificate, which allows for the new building to be used, as it complies with applicable regulations.

Both LGUC (Title I, Chapter III) and OGUC (Title 1, Chapter 2) define the responsibilities of public officials (including DOM officials) and construction professionals, as well as sanctions in case of infringements of the permit procedures (LGUC, Title I, Chapter IV, and OGUC, Title 1, Chapter 3). Sanctions consist of fines, but DOMs can also order the suspension of works, or partial or total demolition.

Source: Government of Chile, January 2016.

The central Government keeps statistical information on issued permits (Table 9.1.):

Table 9.1. **Total amount of permits granted in Chile (2010-2014, per year)**

Year	New buildings and regularisation of new buildings	Expansions and regularisation of expansions
2010	25 252	18 168
2011	31 578	20 861
2012	26 382	22 928
2013	27 296	18 877
2014	34 709	21 235
2015 (preliminary numbers until October)	20 847	12 988

Source: Formulario Único de Estadísticas de Edificación, INE (Table prepared by MINVU Housing and Urban Studies Commission)

Further statistics are available, in both aggregated and disaggregated formats,[7] collected also in an annual report (*informe anual*) issued by the National Statistics Office. The data refers mostly to the number and surface of authorised buildings without necessarily highlighting the correlation between the construction permit process and its outputs. For instance, the statistics do not reveal the number of applications for permits, the number of permits issued; the length of the procedures; their costs; the number of inspections and the type of main infringements; the number of appeals and their reasons; etc.

Evidence from past experience shows a number of challenges that persist in the Chilean construction sector, of which the Government is aware. It is first acknowledged that the main problems lie less with the engineering technical standards than with the co-ordination governance of the sector.[8] Several sectoral legal regimes exist, which are not only divided into vertical silos and structured in strict hierarchies, but also very autonomous and organised in various, incompatible structures. This makes co-operation and even communication particularly cumbersome. Each of these bodies, even within the administration of a municipality, constitutes a centre of power which needs to be addressed individually.

Second, the intricate allocation of competences across institutions and subordinate bodies creates a Byzantine coverage of the administrative territory, whereby the size and shape of the jurisdictions differ according to each competent institution. This not only makes the governance of the territory more complex, it also creates a climate of administrative turf wars if not of open distrust. Investigations or inspection authorities in fire protection or health and safety standards, for instance, cover various parts of the territory from one region to the other. There are various administrative channels to address various issues and no centralised phone number is available. This makes it difficult to coherently organise the planning as well as the regulatory and management functions (OECD, 2012a, Principle 10).

Third, the legal basis governing the construction permit regime presents gaps and is therefore misleading. The diverse organisation, functioning and performance of the

DOMs well illustrate these three challenges. DOMs may end up operating in very diverse ways, not least because they exert discretion in laying down special conditions for permit approval. This may result in different criteria to review and varying processes to obtain a construction permit, depending on where it is requested. The predictability and administrative certainty of the process are thus jeopardised. Moreover, resources are allocated very asymmetrically across DOMs. The permit application process must be done in person at the DOM offices, and hard copies of each document must be submitted. All this significantly increases the risk of errors, delays and lost files when processing permit applications. This jeopardises the effectiveness and efficiency of the system.

OECD countries have embarked on simplification revisions of the legal framework by considering the impact that such reviews may have on administrative burdens and compliance costs by stakeholders (see Box 9.9).

Box 9.9. **Simplify and streamline the legal framework: Italy and the United Kingdom**

Italy carried out a comprehensive measurement of the administrative burden arising from private house building in 2013. A survey was conducted in almost 600 Italian municipalities, some 8 800 among professional associations and individual experts, and through focus groups. Estimated savings amount to more than EUR 236 million, of which EUR 90 million thanks to the introduction and wide diffusion of sectoral one-stop shops.

The measurement and consequent recommendations for simplification have significantly informed the elaboration of a series of provisions included in the so-call "Unlock Italy" bill of November 2014, which contains several measures to unleash the country's potential for modernisation through simplification.

In the **United Kingdom**, the government launched a "Cutting Red Tape review of house building" in 2015. The review is led by the Cabinet Office, the Department for Communities and Local Government and the Department for Business, Innovation and Skills, working with other government departments and regulators to identify and remove unnecessary regulatory barriers to growth and associated costs to the house building sector, while ensuring necessary protections are maintained. Extensive online pubic consultation was run to collect insights from businesses, trade associations and others with an interest in the sector.

The review is going to examine any aspects of regulation or the way it is implemented which could be made simpler, more cost-effective, efficient, proportionate, or consistent. As such, the House building Review is integral part of the Government "Red Tape Challenge" and the "Focus on Enforcement" programmes.

Source: ItaliaSemplice (2015), "I settori dell'Agenda", www.italiasemplice.gov.it/i-settori/edilizia/ (accessed 23 February 2016; Cabinet Office (2015), "Cutting Red Tape", http://cutting-red-tape.cabinetoffice.gov.uk/, (accessed 24 February 2016.

Fourth, the current legal basis appears incomplete on two topical elements underpinning good governance of the construction permit process – namely, embed a well-designed risk-based approach; and the enforcement of generalised insurance schemes. As to the first, risk-based approaches refer to efforts to rationalise the allocation of scarce resources to ensure enhanced efficiency in performing administrative functions. The underlying goal is to prompt administrative action out of the awareness of the real needs and the necessity to ensure proportionate investments, rather than because of rule-driven conformity. Resources are therefore channelled there where the risk of infringements is higher or the magnitude of adverse effects is greater (OECD, 2010, Chapter 6).

Streamlining the risk-based approach to certification and control reflects good international practice and forms integral part of the *2012 OECD Recommendations on Regulatory Policy and Governance* (OECD, 2012a, most notably Principle 9). In the construction permit sector, the most immediate application of risk-based frameworks is linked to the inspection regime; not least further to revised classification schemes (see Box 9.10).

Box 9.10. **Classifying buildings to rationalise control: Australia, France, Lithuania and the European Union**

Providing clearly defined categories of buildings for which various levels of screening are required is one application of such risk-based approaches. Often, countries have linked the classification of the buildings with the organisation (frequency and stringency) of the subsequent inspection policies.

Australia has developed a rather detailed classification system with up to nine building categories. Each category is linked to the use of the building and a level of risk associated to it. This allows for refinements. For instance, if an office building has one floor with residential apartments, that floor will be classified differently and different scrutiny and inspection criteria apply.

In **France**, the building classification is primarily based on occupancy and use, though height also plays a role. Accordingly, only non-residential buildings that receive visitors (such as malls, office buildings or movie theatres) and residential buildings up to 50 meters tall are categorised. Mandatory inspections are required for those buildings that host 300 people or more, and inspections may in turn relate to the whole building structure or to a specific part of the building such as framing, roofing or thermal performance.

In **Lithuania**, specific emphasis of the construction permit reform was put on clarifying the criteria for assigning a building project to exceptional categories that require dedicated certifications either because of specific preservation purposes or determined levels of risk. Such categories were allegedly excessively wide and prone to various interpretation and discretion. Not only were the definitions spelled out better, also the number of such categories has been reduced from fifteen to only seven. The reform also reduced the number of cases that require the involvement of all possible certifying authorities foreseen by the law.

At **EU** level, a system of ten European Standards (EN 1990 - EN 1999) provides a common approach for the design of buildings and other civil engineering works and construction products. They contribute to an integrated approach of European policies for the construction sector and ensure uniform levels of safety. As such, they are mandatory for Member States, although a margin for applying innovative risk-management policies is allowed and indeed incentivised.

Source: World Bank (2014), "What role should risk-based inspections play in construction?" in *Doing Business*,pp. 46-51;http://eurocodes.jrc.ec.europa.eu/showpage.php?id=1; http://eurocodes.jrc.ec.europa.eu/ and OECD (2015b), *Regulatory Policy in Lithuania: Focusing on the Delivery Side*.

In the current Chilean legal framework and practice, the notion of risk-based approach does not appear to be fully defined and exploited in its potential to address the current needs and context. Infrastructure and commercial projects are, for instance, not contemplated in the current legislation while many other cases of economic activity that may prompt the issuance of a construction permit are not appropriately covered. This causes a spill-over dynamic of interpretation and discretional application of the normative both by the regulators (centrally, and in the DOMs) and by the judge.

A refined risk-based approach to construction permit authorisation would also streamline the inspection regime,[9] which to date is mainly reactive and not preventive. To date, municipalities do not operate on the basis of a formalised protocol of inspection that

reflects the various types of risks that specific zones, buildings or activities may present. Because the construction process and sites progress every day, it is impossible for inspectors to be always present everywhere. As a matter of fact, inspections are launched only upon complaints and formal denunciation by neighbours because of the scarce resources available to DOMs. Leveraging on market forces might help overcome such challenge. Recurring to private (certified) partners to enforce construction safety regulation often constitutes a superior solution to state-based inspections (Blanc, 2012; World Bank, 2008; and Visscher and Meijer, 2005). Examples of such approaches are provided by experiences in a number of European countries (OECD, 2015b, Box 9.10).

The second important element underpinning good governance of the construction permit process refers to insurance schemes. In the Chilean current construction permit legal framework, there is no requirement for mandatory insurance. International experience suggests that such a principle is particularly effective to avoid market and regulatory failures related to liability enforcement. Typical instances of problems are those where owners or developers are left with no recourse in the case of construction defects if builders/contractors go bankrupt in the meantime or simply had insufficient resources to remedy the damage. In other cases, even when builders are adequately insured, owners often have a difficult time getting the insurance to pay up, requiring lengthy and costly court cases to succeed.

For Chile, the lack of generalised insurance schemes is particularly problematic in the light of the high risk of natural accidents to which the country is subject. Especially in case of natural disasters, only the concessionary builders of infrastructure works must be insured. In some instances during the reconstruction process after the 2010 earthquake, voluntary insurance has proved to be chaotic. For instance, in the case where different tenants of an apartment complex are differently (or not all) insured, it may be difficult to agree on a common risk coverage policy or to achieve reimbursement in the case of damage. Apartment complexes, in fact, usually have insurance that covers for damage in common areas only, not individual units. Property units are mandatorily insured in the extent to which mortgage loans are still unpaid and pending. In these cases, it is the bank that is insured, not the household. By contrast, most owners who bought their property units without a loan or who inherited them, do not have an insurance. A formal and binding general requirement for liability and insurance for all actors involved in the construction process is likely to address similar situations (see Box 9.11).

Box 9.11. **Generalising insurance and liability throughout the construction chain: France**

In France, the principle of liability and insurance in the construction sector was enshrined in the Napoleonic Civil Code in 1804 already. It was nonetheless only through the so-called Spinetta Law of 1978 that all actors participating in the construction industry chain – not only architects and builders, but also owners (or contracting authorities) – have to hold insurance against potential faults in construction. The core of the system is indeed to rely on insurance companies to settle claims between themselves (avoiding litigation as much as possible) and to enforce some "discipline" on construction professionals in the form of higher premiums for those with a poor track record.

By doing so, the logic of the reform process has been to transfer responsibilities for compliance to private actors. This has not meant de-regulation, though; and the State has the power to enforce them through the court system. However, day-to-day control is carried out by mandatory technical control, performed by third parties (not the State). Construction permits require only basic plans and no detailed technical specifications. The liability of private contractors, the mandatory insurance and technical controllers are the three elements which

Box 9.11. **Generalising insurance and liability throughout the construction chain: France** (*cont.*)

ensure compliance. The progressive reform of the construction sector along these axes has allowed France to reconcile the two fundamental objectives of the reform – simplifying the procedures and ensuring quality and safety.

Source: «Box 9.7 » *Regulatory Policy in Lithuania: Focusing on the Delivery Side*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239340-en.

City planning activity

A further gap derived by the nature of the current overarching legal framework is the fact that the municipal zoning and master plans are not planning documents. This in turns jeopardises inter-communal planning co-operation and, eventually, the overall territorial development policy of the country. Two main issues of concern emerge; the length of the approval process and the accuracy of master plans. The approval process for municipal plans tends to be long, averaging seven years and hence resulting in plans that are obsolete by the time they are approved (OECD, 2013d). In addition, zoning and master plans do not indicate how the municipality is to develop its urban territory and its activities, when, and by whom. Rather, master plans are mere lists of regulatory requirements setting limits for construction projects, thereby serving little to strategic planning and policy. In this respect, it is important that the future National Policy for Urban Development stems from the notion that cities are living entities, which ought to be consistently managed by linking urban zoning standards, territorial planning and socio-economic development.

International good practice suggests in this respect that the territory should be conceived functionally, i.e. in terms of socio-economic interlinkages and mobility rather than through as a mere administrative entity. In most countries, functional economic relations have developed at a scale that goes beyond most of the existing internal administrative boundaries. Commuting, economic activities and knowledge spill-overs all take place in an area that, in many instances, is larger than a commune or even a district. There are also balances between areas providing jobs and services and those that have remained rather residential but attract tax revenues. This has wide-ranging implications for internal co-operation mechanisms – both horizontally and vertically. OECD countries are thus re-considering their approach to territorial reform (see Box 9.12).

Box 9.12. **Administering the territory around functional socio-economic areas**

"Functional regions" are geographic areas defined by their economic and social integration rather than by traditional administrative boundaries. A functional region is a self-contained economic unit according to the functional criteria chosen (for example, commuting, water service or a school district). The organisation and delivery of infrastructures and public services have important implications for access to jobs, for instance. This is particularly important for low-income workers, who may not be able to afford to live closer to the jobs or along transport lines that facilitate access. As mentioned in Box 9.11 above, "getting cities right" implies that governments take a more strategic, holistic approach through the design and implementation of policies that enable cities to become more competitive, environmentally sustainable and socially inclusive.

Reforms may occur on the basis of policy sectors. The water sector is a point in case, highlighting the need to align interests, socio-economic actors and resource management

Box 9.12. **Administering the territory around functional socio-economic areas** *(cont.)*

functions (such as supply of drinking water and water for agricultural purposes, wastewater management and drainage or again flood protection) across different types of places. Aligning objectives and incentives can help deal with the fragmentation of policies beyond the water chain. In Singapore, lowering water consumption through conservation makes it possible to pursue multiple objectives at the same time.[1] In Israel, there is an explicit co-ordination between policies for water allocation and energy.[2] In the Netherlands, legal instruments, such as "space for water", enhance the co-ordination of water management and spatial planning, while local taxation of regional water authorities can provide useful information about the potential costs of specific land-use proposals (OECD, 2014d).

Some countries have launched municipal reforms to overcome local government fragmentation. They established "inter-municipal functional bodies" or "agglomeration communities" to bring administrative structures closer to functional realities, for example. In Canada, for instance, a new regional body called Montreal Metropolitan Community (MMC) was created in 2001 to handle land planning, economic development, housing and public transit, environment and waste management. The MCC is managed by a council of 28 representative mayors and its budget is mostly funded by contributions from the member municipalities (88%) and grants for the Quebec provincial government (12%). In France, so-called Agglomeration Communities and Urban Communities were created as inter-municipal co-operation bodies for urban areas of over 50 000 and 500 000 inhabitants, respectively. These authorities perform equivalent functions as those just mentioned in relation to the MCC. They enjoy their own tax revenues from a common business tax and receive some financial assistance from the central government (OECD, 2006; 2009b).

In Switzerland, function-based approaches to territorial development policies and governance have been launched in the form of a New Regional Policy (NRP), since 2008; and a Federal Agglomeration Policy, since 2011, building on the experience of so-called inter-cantonal concordats. 50 agglomeration areas have been defined statistically, but each agglomeration area is free to establish its own perimeter and develop an agglomeration programme. Agglomeration areas benefit from an infrastructure fund, largely for transport infrastructure projects, and from a fund for model projects (OECD, 2011).

In the United Kingdom, the government has shifted focus to functional economic areas by launching local enterprise partnerships (LEPs). These partnerships between local authorities and businesses decide on local priorities for investment in roads, buildings and facilities. In addition, 24 enterprise zones have been awarded with tax incentives and simplified local planning regulations. Since late 2011, urban policy has been centred on a growing number of city deals in England that are being implemented in waves. The establishment, moreover, of the Greater London Authority is an example of more encompassing reforms across the OECD zone that seeks to enhance effective metropolitan governance. Such reforms notably identify and build on territorial and communities' commonalities; they empower and engage stakeholders at an early stage; and they leverage evidence base and monitoring of decisions.

1. See, for example, Singapore Ministry of the Environment and Water Resources (2010); Onn (2005); and Public Utilities Board (2010).

2. Per the Israeli Water Authority's 2010 Master Plan for National Water and Wastewater Management.

Source: OECD (2014c) *OECD Regional Outlook 2014: Regions and Cities: Where Policies and People Meet*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264201415-en.; OECD, (2014d) *Water Governance in the Netherlands: Fit for the Future?*, OECD Studies on Water, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264102637-en.; OECD, (2006), *Competitive Cities in the Global Economy*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264027091-en.; OECD, (2009b), *Regions Matter: Economic Recovery, Innovation and Sustainable Growth*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264076525-en ; OECD, (2011), *OECD Territorial Reviews: Switzerland 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264092723-en. .

A functional approach to territorial governance would also address structural issues related to the allocation of revenues on the one hand and budget for regional and local development investments on the other. This would help fill the existing lack of integration between planning requirements and financing mechanisms. To date, the budget structure is still strongly tilted in favour of a central, top-down approach. Regional governments do not have an independent budget for carrying out regional investment.[10] Also municipal government budgets depend largely on resources from national transfers as well as on inter-municipal transfers from a municipal equalisation system called the Inter-municipal Common Fund (FCM). Only the wealthier localities can afford to use their own-source revenue to invest in local economic development initiatives).

An opaque and inefficient administrative system has emerged as a consequence and mirror of the legal and institutional context. The dual (technical and political) accountability of the Department of Municipal Works (*Dirección de Obras Municipales, DOM*) within the same municipality is a challenge denounced by many stakeholders and experts, as it triggers dysfunctions and possible capture. The DOM reports to the SEREMI on technical issues while the political and financial referent office is the mayor (alcalde).

This engenders a series of dysfunctions. First, decisions may suffer from divergences in strategic visions, functional and time horizon considerations as well as legal interpretations between the national and the local regulators. Second, the administrative dependence of the DOM director on the mayor may create the risk of political takeover of what instead should remain a strictly technical office. In the case where decisions by DOM are appealed by the applicant or third parties, in particular if the SEREMI detects a procedural infringement, it must inform the audit authority (contraloría) which reverts to the alcalde to establish possible fines. This closing of the cycle leads to potential bias and conflict of interest and may clash with the OECD recommendation on ensuring effectiveness and fairness in enforcement (OECD, 2012a – in particular, Recommendation 8).

There is a wide-spread shortage of technical capacities in the local public administration combined with superficial knowledge of the legal procedures among professionals. Also as a consequence of the possible political takeover mentioned above, the appointment processes within the municipalities to technical functions tend to lack transparency and rigour, which jeopardises the expertise and professionalism of the staff in charge of handling the procedures. A high turn-over among DOM staff represents an additional challenge. Besides the generalised poor capacities of the public administration, architects and engineers tend to have a weak knowledge of the legal and procedural framework governing the permit application and authorisation processes. The combination of these two deficiencies is clearly an aggravating factor especially in small municipalities.

A further challenge refers to the availability of comparable information, which puts at risk the transparency, fairness and accountability of the public administration. Information pertaining to construction permits in particular, and also to urban and territorial planning more generally, is provided by the various authorities in different formats and means (for instance, maps of the same parcels are issued using different scales by different bodies), with different access rights (some information is free of charge, some others against payment) and various quality standards. In addition, each register and database is updated autonomously and not systematically. Such differences

not only affect the overall quality of public service delivery, leaving actual blanks of information on several pockets of the Chilean territory and preventing developers from making their own investment risk assessments. They also leave margins open to opaque, discretional and unaccountable behaviour from by both the public administrator and individuals.

As it was also mentioned in the previous section, the Chilean construction permit regime still largely relies on paper-based procedures, whereas the penetration of ICT and e-Government solution has remained extremely limited. As Chapter 11 in this review has outlined in detail for the overall public administration, also in relation to the construction permit procedures there is a wide need for streamlining through digitisation.

A case study analysis carried out in Peñalolén, a commune in the Santiago Metropolitan Region has revealed the symptomatic working conditions of the DOM (see Box 9.13).

Box 9.13. **Appraising process management at municipal level: Peñalolén**

In 2008, the *Cámara Chilena de la Construcción* commissioned a case study investigation to identify and prepare suggestions and recommendations that could help the Department of Municipal Works (DOM) of Peñalolén municipality to provide better service to its users and better manage its internal processes.

The study highlighted a number of structural organisational weaknesses, which may be extrapolated as representing the typical working environment of an average DOM in Chile. Taken together, the gaps revealed the lack of an integrated management system. The main weaknesses included:

- the lack of a centralised database and, therefore, the risk of duplication or triplication of information generating uncertainty regarding the validity, updating or reliability of the data;
- the prevalence of paper-based filing and communication, with limited ICT resources available;
- relatively chaotic archiving (due both to the paper-based documentation and the fact that only one person is responsible for this task), which makes access to information complex but also unsecured;
- the insufficient availability of motor vehicles to carry out external tasks such as background information, inspections, controls, etc.)
- various background and skills among the staff, with no specific definition of terms of references, job descriptions and responsibilities allocated to them;
- training needs in both "hard" areas such as information management, use of tools specialised (AutoCAD) and basic software, and in "soft" areas such as teamwork, quality of service and satisfaction customers;

Among the main recommendations made by the study were:

- Existing legal framework: ensure that municipal response deadlines are met as prescribed by the law according to the size and complexity projects.
- Internal processes: Set out internal processes to streamline the time and procedural steps needed to meet the demands of customers of the DOM.
- Organisation: Establish a Land Registry department or unit that is responsible for the territorial information from the commune.

Box 9.13. **Appraising process management at municipal level: Peñalolén** (*cont.*)

- Physical information: Organise a centralised cadastral filing system to be validated and updated regularly.
- Electronic information: Install an integrated, reliable, updated and user-friendly information system.
- Staff capacity-building: Address the inadequate allocation of skills and expertise in some functions of the DOM and train the existing staff.

Peñalolén benefitted from this diagnostic work and became one of the first (and still rather few) municipalities that introduced a digitalised system and established dedicated administrative structures.[1] The Santiago Metropolitan Region is working towards scaling up equivalent reforms across further six communes. Anecdotal results indicate a reduction in the time necessary to issue a permit from 140 to 60 days on average. While the software has been applied to achieve 90% of the procedural steps in 2013, since 2014 the DOM is working at refining it.

1. See www.asesoriasayc.cl/sistema-digital-de-permisos-de-edificacion-penalolen/.

Source: Cámara Chilena de la Construcción, CChC (Chilean Construction Chamber) (2009), www.corfo.cl/sala-de-prensa/noticias/2014/octubre-2014/proyecto-escritorio-empresa.

Taken broadly, digital government is run by the Ministry of General Secretariat of the Presidency (SEGPRES) through its State Modernisation and E-Government Unit and the Ministry of Economy, Development and Tourism through the Business Desk initiative. They are driving reforms that aim at administrative simplification and reducing the bureaucratic burden which includes permits. The generalisation of ICT processes and tools in the construction permit procedures would trigger a wide range of benefits, including:

- an easier and objective control where set deadlines are met;
- the possibility of identifying possible delays or mistakes accurately and in real time;
- the limitation of human interactions between applicant and administrator, thereby reducing the risk of takeover or other fraudulent mismanagement;
- the possibility of centralising procedural management in single digital one-stop shops (*ventanillas únicas*); and
- the generation of information and statistical data which, beyond the construction permit realm, can be very relevant for the unfolding of a more comprehensive and better organised dataset.

The digitisation of the procedures thus enhances the overall transparency and accountability of the regime, at the same time providing higher legal certainty for the applicant. For the public administration, it allows precise performance tracking, which can yield more accurate statistical data feedback on where there are procedural or organisational bottlenecks (see Box 9.14).

Box 9.14. Digitising the construction permit procedures

Building Information Modelling (BIM) technologies can play a decisive role in improving building code compliance strategies, significantly contributing to streamlining the design process, reducing time and costs. BIM systems manage essential building design, construction, maintenance, and overall project data in digital format throughout the building life cycle. This digital information, in its simplest form, is a three-dimensional representation of the building and its hidden specification details.

The *DesignCheck* program is a case in point. Developed in Australia as a BIM providing an automated code-checking tool, designers can use this program to check the code requirements at different stages of project design. Compliance consultants and building authorities can get automated data from architects, and basic checking and building-code compliance tests can be done rapidly and automatically, allowing those responsible for building compliance to focus on higher-risk features (World Bank, 2013, p. 19).

A further important contribution that ICT can make to administrative simplification relates to the creation of efficient one-stop shops. While the advantages are well documented, at present only 37 economies around the world have some kind of one-stop shop for construction permits procedures. Since 2009, 17 economies have successfully implemented one-stop shops for permit applications (World Bank Group, 2015).

Source: World Bank (2013), *Good Practices for Construction Regulation and Enforcement Reform. Guidelines for Reformers*, Investment Climate, p. 19; and World Bank Group (2015), "Dealing with Construction Permits", Doing Business, www.doingbusiness.org/data/exploretopics/dealing-with-construction-permits/good-practices#using (accessed 24 February 2016).

Management of natural risks

As generally mentioned also in relation to the urban development policy context, the overall framework for managing risks related to natural disasters is largely insufficient in Chile.[11] Most notably, the main notions of risk assessment and management ("hazard", "risk", "probability", "exposure"), while well drawn up and understood by academia and among professionals, equivalent governance measures have not been found in practice. Neither the legal basis nor the various institutions addressing natural disaster risks sufficiently define and contextualise them so as to create an effective risk management regime.

The OGUS (Article 2.1.10) does provide for natural and environmental risk assessments to be carried out to underpin the elaboration of specific, individual plans. The current legal framework, however, does not require the existence of a central steering body and the consequent preparation and publication of nation-wide consistent risk maps. This complicates and partly hampers the efforts to ensure the inter-operability of databases and the availability and transparency of information across levels of government and institutions, as sought by the *IDE Chile* system.[12] Managed by the Ministry of National Assets, this initiative aims at providing public agencies and the public at large with digitised information on geographical characteristics. The scope of *IDE Chile* includes risk mapping. At present, plans are available that are related to risk of tsunami flooding; of eruptions from the Calbuco and Villarica volcanoes; of vulnerable infrastructure; as well as of location of police and fire brigades.

Failure to fully reap the potential offered by *IDE Chile*, the contribution made by several institutions of various mandates and hierarchies to data analysis and management plans remains rather confusing and patchy. To illustrate, the Chile Meteorological Services (*Dirección Metereológica de Chile*) which is a subordinate body of the Civil

Aviation Directorate, registers climate data and issues forecast studies of various types and purposes; SERNAGEOMIN (a branch of the Mining Ministry), carries out geological studies and studies on volcanic and landslide risks; the SHOA, which depends on the Chilean Armed Forces, issues information on ocean and costal activities and carries out tsunami modelling; the Hydraulic Works Division (*Dirección de Obras Hidráulicas)* of the Ministry of Public Works (MOP) is responsible for river and ravine management; while again the National Seismological Centre (*Centro Sismológico Nacional de la Universidad de Chile*) reports on past earthquakes.

There is, moreover, no direct, systematic linkage between the products of the activities of these (and other) institutions, nor are there any compatible databases to allow such comparison or exchange of data, statistics and information. As an example, what "red alert" means and what implication it triggers may significantly differ from one scale of danger adopted by a certain body to the one adopted by another body.

There is also no interface between these activities and the city planning and territorial management activities; the resources available to conduct appropriate risk assessment studies are scarce. Against this background, any initiative to prepare regional as well as municipal zoning and master plans (*planos reguladores*) needs to carry out its own research and investigation on the risks associated with natural disasters. The scope, depth and appropriateness of such studies are completely left to the appraisal of the initiating authorities (CORE or, most of the time, municipalities), mainly as a function of the resources and expertise available. The latter are typically lacking or at least disproportionate to the possible risks and there are no systematic criteria for checking the rigour and completeness of the studies.

From diagnosis to action

The context of the territorial governance and construction regime in Chile is not static and ossified. Stakeholders denounce the length and unpredictability of the procedures. Anecdotal evidence indicate the relative weight that challenges linked to the regulatory and administrative framework in general, and the construction permit procedures in particular, influences the private developers' decisions to invest. They estimate as roughly two years the time necessary to obtain authorisation to build an industrial plant while it takes on average 11 months to carry out an Environmental Impact Assessment.

International comparative analyses tend to corroborate the stakeholders complaints. The World Bank's Doing Business index, for instance, reports an overall mediocre performance of Chile over the past decade. While it does not outperforms among Latin American countries, Chile lags behind key trading partners. Despite a distinctive improvement in 2012, in the construction permit sector Chile ranked in 2015 only 62 out of the 189 economies surveyed – despite an overall "Ease of Doing Business" rank of 41. Obtaining construction permits is a lengthy procedure in Chile largely because of the amount of steps it takes to obtain them by disparate governing bodies and firms. Information on water and sewage availability, for example, must be obtained from a sanitation company, and checks with the telecom company, the environmental health services, SERVIU and DOM must all be conducted during the process.

The fifteen procedures that had to be followed when dealing with construction permits were cut down to 13 procedures in 2011. This reduced the number of average required days from 193 to 152 in 2012, resulting in an administrative cost fluctuating around 0.7% of warehouse value. According to the Doing Business calculations, this

performance positioned Chile at about 76 "distance to frontier" (DTF) points (see Table 9.2).[13]

Table 9.2. **Chile's Doing Business construction permit index (2006-2015)**

Year	Rank	DTF	Procedures (number)	Time (days)	Cost (% of warehouse value)
DB2006	--	68.18	15	193	1.5
DB2007	--	68.39	15	193	1.3
DB2008	--	68.45	15	193	1.3
DB2009	--	68.91	15	193	1.0
DB2010	--	68.97	15	193	1.0
DB2011	--	69.03	15	193	1.0
DB2012	--	75.79	13	152	0.9
DB2013	--	76.01	13	152	0.7
DB2014	61	76.10	13	152	0.7
DB2015	62	76.13	13	152	0.7

Note: No DB ranking is reported for the country's performance before 2014.

Source: World Bank Group (2015), "Doing Business: Measuring Business Regulation", www.doingbusiness.org/Custom-Query/chile (accessed 24 February 2016).

DB indexes provide relevant comparative insights both in terms of diachronic evolution (how an economy performs over time) and in relation to neighbouring countries and trading partners (how in a same year an economy performs compared to other economies). From the latter perspective, in 2015 basically Chile equalled Ecuador and Colombia as the top economy in the region facilitating construction permit procedures. The score was particularly better than other major Latin American economies, notably Mexico, Brazil and Argentina. Compared to leading trading partners such as South Korea and the United States, however, Chile's performance remains problematic (see Table 9.3).

Table 9.3. **DB Construction permit index 2015 (Chile and 11 neighbouring and trading countries)**

Economy / name	Rank	DTF	Procedures (number)	Time (days)	Cost (% of warehouse value)
South Korea	12	85.89	10	29	4.3
United States	41	78.87	15.8	78.6	1.0
Ecuador	59	76.86	15	114	0.8
Colombia	61	76.45	10	73	7.4
Chile	**62**	**76.13**	**13**	**152**	**0.7**
Japan	83	73.3	12	197	0.6
Peru	87	72.91	14	174	0.5
Mexico	108	68.43	11.3	87.6	10.3
Bolivia	129	64.97	12	275	1.1
Uruguay	162	55.69	21	251	0.8
Brazil	174	48.31	18.2	426.1	0.4
Argentina	181	42.54	21	341	3.5

Source: Doing Business data, www.doingbusiness.org/.

The Government dynamically acknowledges dysfunctions in the construction permit regime and is considering a number of initiatives to address them. The main challenge it reports concerns the alleged excessive time involved in the process and, from the developers' perspective, the discretionary procedures and decisions that may occur. Developers are reported to often complain about these issues especially in a context of heterogeneity. Some municipalities are fast, efficient and transparent, while others may be slow and/or do not stick to transparent and known procedures and decision-making.[14]

Although no formal, official reform has been launched to address the challenges in the construction permit regime, several distinguished initiatives are presently ongoing. Currently there are no explicit reforms being carried out or planned in relation to construction permits, at least from the administrative perspective. The Government has however launched preliminary discussions on implementing broader land use planning instruments intended to regulate territorial development beyond urban boundaries. Regional planning efforts are proposed in a context of increasing litigation of project development, for instance with regard to the location and compensation of externalities related to energy production and transmission, and with a view to ensure sustainable housing and territorial development. Allegedly, the Government believes, regional planning should increase certainty to investors while granting a higher degree of protection to local communities through protected areas and/or adequate compensation schemes. Other initiatives are being discussed at central level (see Box 9.15).

Box 9.15. **Ongoing initiatives in relation to territorial development policies and governance**

The debate in Chile on the needs and possibilities to enhance territorial development policies and governance is not silent. Several initiatives have been launched by the Government and / or are currently debated in congress, with a strong focus on energy efficiency and sustainability. However, this set of action, which neatly reflects international good practice of "green building" policies (for instance, see World Bank, 2010), is mainly focused on individual construction projects and not on urban planning as such.

Among the most relevant initiatives are:

- **Law proposal on energy efficiency:** Chile is discussing a proposal which is not specific to the construction sector but has the potential to substantially upgrade the territorial urban planning, development and management governance. Covered by the proposal on energy efficiency would be especially those industrial sectors (including mining) that need significant amount of energy, although also households, small business and the public sector are going to be concerned. The goal currently discussed is a reduction in the overall energy consumption of 20% by 2025.

- **Code of sustainable building:** This is part of the mandate of MINVU since 2013. It consists of consolidating the provisions pertaining to the processes, technologies and materials in the construction sector by taking into account sustainability standards. The new code, which will be more stringent than the regulatory provisions currently in force, is expected to be issued by the end of 2015. It will be voluntary and aspirational, according to the Government. A Version 1.0 of the Manual of Good Practices was already issued in January 2014 and it is currently under revision.[1]

- **National Strategy for Sustainable Building 2013-2020:** The above-mentioned code falls within the broader co-ordinated work of four ministries (the ones of Housing and Urbanism; of Energy; of Public Works and the Ministry for Environment) to design and implement a multi-annual strategy that provides principles and tools to integrate sustainable development policies into the building sector. The Strategy seeks to co-ordinate and link the current energy and environmental plans that so far have been

Box 9.15. **Ongoing initiatives in relation to territorial development policies and governance** (*cont.*)

developed in parallel and autonomously by different government agencies. Accordingly, the Strategy seeks co-ordination of the various goals and actions in the short to long term. Moreover, it seeks to generate innovation, entrepreneurship, education and dissemination of good habits both in the private sector and among the population. The incorporation of sustainability of each individual building into its surrounding environment is central. These objectives will be monitored through indicators, in order to achieve the goals in the proposed times.[2]

- **Decentralisation reform:** Chile is also discussing ways to enhance regional autonomy and development through decentralised patterns of governance both at the regional and local levels. To that end, a dedicated Commission issued a report in October 2014 to the Presidency (*Comisión Asesora*, 2014). Given that permits are already granted locally, decentralisation efforts should come as an opportunity to increase financial resources at the local level in order to speed up processes and increase transparency and accountability (*Comisión Asesora*, 2014).
- **Law on regional plans for territorial planning:** As a part of the decentralisation agenda, Parliament is currently discussing the scope of a bill establishing *Planes Regionales de Ordenamiento Territorial* (PROT) and future policy frameworks defining and managing them.

1. http://csustentable.minvu.cl/ and www.minvu.cl/opensite_20130926150109.aspx.

2. See www.minvu.cl/opensite_20130318120726.aspx.

Source: Government of Chile, Questionnaire April 2015; World Bank (2010), "Mainstreaming Building Energy Efficiency Codes in Developing Countries. Global Experiences and Lessons from Early Adopters", *Working Paper 204*,; Comisión Asesora Presidencial en la Descentralización y Desarrollo Regional (2014), "*Propuesta de Política de Estado y Agenda para la Descentralización y el Desarrollo Territorial de Chile: Hacia un país desarrollado y justo*", 7 October.

Action is also being taken at regional level, notably in relation to digitisation infrastructure. The local government of Santiago's Metropolitan Region, for instance, is supporting an initiative to speed up and partially digitise the permit granting procedures in the municipalities involved. This initiative follows the successful experience of the system implemented by the current Metropolitan *Intendente* when he was the Major of Peñalolen (see Box 9.12 above). However this initiative does not imply a general policy or any changes in actual legislation, it is simply a worthwhile attempt to improve procedures within the current framework.

Concretely, a number of fora have been created which, while they seek to enhance multi-stakeholder engagement and co-ordination, they appear to lack overseeing leadership. This tends to reflect a generalised approach by Chile's decision-makers of punctual, autonomous political entrepreneurship rather than comprehensive and coherent strategy. To illustrate, in 2012 Chile's President established a Presidential Advisory Commission on National Urban Development Policy (*Comisión Asesora Presidencial, Política Nacional de Desarrollo Urbano*) to launch the PNDU's development. In addition, the Government established a City, Housing and Territory Interministerial Commission (*Comisión Interministerial Ciudad, Vivienda y Territorio)*, which is chaired by the MINVU Minister, tasked with addressing public infrastructure investments related to the quality of life in cities and harmonising them to enhance welfare of the urban

centres. The axes of work of the Commission are viability, accessibility, transport and connectivity.[15]

In this respect, Chile's Economic Development Agency (*Corporación de Fomento de la Producción, CORFO*) is a Government body that bears tremendous potential for efficient programming and implementation. CORFO's mission is to improve the competitiveness and diversification of the country by encouraging investment, innovation and entrepreneurship, through enhanced human capital and technological capabilities to achieve a sustainable and territorially balanced development. For decades now, CORFO has administered dedicated development plans that included special credit schemes as well as direct interventions. With specific reference to territorial development, CORFO's programmes seek to build a long-term vision for the economic, social and environmental development of the territory, and to provide a framework or anchor for the various sectoral measures, including policies, programmes, and plans (see Box 9.16).

Box 9.16. **CORFO's programs to improve territorial governance in Chile**

The **Integrated Territorial Program (PTI)** is an example of recent cross-sectoral initiatives to improve co-ordination at the regional level. It aims to foster regional competitiveness by improving co-ordination between the different actors and policies in the targeted territories regarding overall strategy and program implementation. These regional initiatives have involved co-operation between CORFO and different ministries and the program beneficiaries may be public or private entities linked to the territory.

In the construction domain, CORFO's action was most recently triggered by the diminishing rates of Total Factor Productivity (TFP) (-0.7% between 1993 and 2013) that have been registered in the sector despite high rates of overall sectoral growth. Accordingly, a National Strategic Program on Productivity and Sustainable Building was launched in 2014 to achieve a number of goals through systemic action:

- increase TFP in the construction sector;
- integrate sustainability as an additional competitiveness factor;
- optimise the property market value and the market share of sustainable buildings by reducing operation costs as well as costs of accessing buildings of such superior standards; and, more generally;
- contribute to a cultural change with regard to the relevance of sustainability to achieve higher quality of life in modern society.

The Program geared towards covering the whole sectoral value chain and facilitating the co-ordination and collaboration between public and private actors. Particular attention is devoted to the interface between industry and academia, which is currently under-exploited. To date, regional and local governments are not formally included in the Program but the possibility to involve also sub-national actors is currently under consideration.

The latter issue is further promoted by CORFO through specific Smart Specialisation Programs (*Programas estratégicos de especialización inteligente*) that seek, within a public-private partnership, to identify and reap the potential of latent comparative and competitive advantages. Launched in March 2015, these programs aim at bridging the technological (transfer) gaps to eventually build up social capital in the mid-term (3-10 years from now). Social capital is the pivoting element to consolidate and sustain trust, consensus and collaboration to guarantee an equilibrate approach to enhanced productivity and sustainability.

Source: Corfo (2014), "Anuncian Programa Nacional para una Construcción Sustentable", www.corfo.cl/sala-de-prensa/noticias/2014/septiembre-2014/anuncian-programa-nacional-para-una-construccion-sustentable" (accessed 24 February 2016); http://www.agendaproductividad.cl/wp-content/uploads/2014/10/PPT_Programa_Estrategico_Construccion_Sustentable.pdf.

Action is also taken on the interface with the local government. In December 2015, the Ministry of Housing and Urban Planning, together with other public and private organisations, started the development of an online platform that will allow the public to apply for construction permits by means of digitalised documents – a project run by the Construction Institute (*Instituto de la Construcción*) (see Box 9.17).

Box 9.17. **Enhancing productivity through digitisation: The *DOM en Linea* project**

In May 2015, a consortium of stakeholders presented a comprehensive study to the Chilean Government on how to enhance productivity of the construction sector. Among the proposals made was the recommendation to better organize territorial planning and development thanks to smarter, digitised construction permit procedures (DOMChile, 2015).

The Instituto de la Construcción is the lead implementing body of the project National Platform for Construction Permits in order to improve productivity (Plataforma Nacional de Permisos de Edificación para Aumentar la Productividad del Sector de la Construcción) (better known as DOM en Linea). This project is co-financed by public and private entities financing under the InnovaChile programme by CORFO and with the support and guidance of various organisations.[1]

The main goal of the project is to equip DOMs to receive and process application and communicate the outcome of the procedure electronically. To that end, three stages are foreseen. The first stage, which is expected to last till November 2016, includes the development of a functional prototype that modernizes and creates a national standard for managing building permits, municipal facilities and related procedures. At the same time, terms of reference for the public biddings will be issued, which are needed to carry out the second phase.

The second stage of the project is scheduled for 2017 and will cover the bidding for construction of the online platform, under the leadership of MINVU. In 2018, finally, the platform is expected to be implemented nationally with the direct involvement of SUBDERE.

DOM en Linea is expected to improve the competitiveness of the construction sector by guaranteeing more equitable, user-friendlier and transparent investment opportunities across all 365 municipalities in Chile. The digitisation of the system helps increasing legal certainty, predictability and integrity in managing permits applications, reviewing dossiers and granting authorisations. At the same time, it speeds up the processes.

1. The organisations involved are MINVU, the Cámara Chilena de la Construcción (CChC), the Asociación de Oficinas de Arquitectos, the Colegio de Arquitectos, the Asociación de Directores de Obras (DOM Chile) and the Instituto de la Construcción.

Source: Government of Chile, January 2016; DOMChile (2015), "Propuesta de modernizacion del sistema nacional de permisos de construcción, recepciones municipales y tramites relacionadosé", www.iconstruccion.cl/images/presentaciones/Propuesta%20modernizacion%20permisos.pdf May (accessed 24 February 2016).

Assessment and recommendations

The construction sector is significant within the Chilean economy and society. The governance of construction permit procedures fits in the institutional and policy background for territorial policy (the PNDU) that this chapter has briefly outlined.

Overall, the Chilean construction permit regime is also characterised by high fragmentation and low co-ordination as well as slow planning and delivery performances relative to a dynamic economic and social context. This chapter has presented the main sectoral challenges on the basis of the three main sets of challenges identified by the Government in the diagnosis prepared for the formulation of its PNDU.

Stakeholders denounce the length and unpredictability of the procedures and international comparative analyses tend to corroborate the stakeholders' complaints. The World Bank's Doing Business index, for instance, reports an overall mediocre performance of Chile over the past decade. While it does not outperform among Latin American countries, Chile lags behind key trading partners.

Against this background, there is general agreement in Chile that the time is now ripe to move from diagnosis of the needs and challenges to concretely launch and implement decisive actions. Government acknowledges dysfunctions in the construction permit regime. Although no formal, official reform has been launched to address the challenges in the construction permit regime, several distinguished initiatives are presently ongoing, which will affect the sector more or less directly.

Chile should carry out a functional review of the institutional arrangements governing both territorial planning and development generally, and the construction permit sector in particular. It should streamline the initiatives launched by the Executive and find synergetic approaches with the ongoing reform discussions taking place in the Legislature, putting emphasis on stakeholder engagement throughout the policy cycle and through feedback loops from the bottom up.

A first analytical lens proposed in this chapter referred to the current institutional structure. Evidence from past experience in the Chilean construction sector shows that the main problems lie less with the engineering technical standards than with the co-ordination governance of the sector. The intricate allocation of competences across institutions and subordinate bodies creates a Byzantine coverage of the administrative territory, whereby the size and shape of the jurisdictions differ according to each competent institution. This not only makes the government of the territory more complex, it also creates a climate of administrative turf wars, if not of open distrust.

A number of fora, reform commissions and project-based bodies have been created in the recent past, which however appear to lack overseeing leadership and co-ordination. This tends to reflect a generalised approach by Chile's decision-makers of punctual, autonomous political entrepreneurship rather than a comprehensive and coherent strategy.

The Government should embark on a general review of "who does what" in the sector, along functional lines. The aim of such a review should be to ensure a holistic, strategic approach to territorial governance which encompasses cross-sectoral policy areas such as private sector development, social inclusion, energy efficiency and sustainability. Future territorial planning and development should be based on a long-term shared and sustained political understanding on the strategic imperatives for the country.

In this respect, Chile's Economic Development Agency (*Corporación de Fomento de la Producción, CORFO*) is a Government body whose model bears tremendous potential for efficient programming and implementation, provided it encompasses all relevant public and socio-economic actors across the regulatory chain. Chile should promote a closer dialogue between public and private actors from an early stage of policy reform design down to the implementation phases.

Local governments and stakeholders should also be actively involved in the monitoring process and be allowed to provide evidence and recommendations for policy refinement by means of institutionalised, transparent feedback mechanisms.

The legal framework governing the construction permit regime should be consolidated and brought up to date with the current needs of the country. Such a reform process should benefit from extensive public consultation and be based on proportionate economic evaluations.

The second area covered by this chapter addressed the legal basis governing the construction permit regime. Currently, this presents gaps and does not reflect the needs and expectations of public territorial management bodies, economic operators, and the general population. It is therefore misleading, giving rise to instances of administrative discretion and legal uncertainty; and it is inefficient, since it generates costs due to possible procedural delays or mistakes, divergent decisional outputs and treatments, and potential takeover. As such, it needs to be revised.

The revision should strive to make the framework simpler, clearer and better accessible in terms of both procedures and legal requirements across legal texts and provisions issued, managed and implemented by the various authorities at all levels of government.

In order to best target the revision endeavour, the legal reform should benefit from direct expert contributions by the relevant stakeholders, including representatives of local governments as well as trade and professional associations.

At the same time, there is little awareness of the real administrative costs generated by the procedures. To date, no evaluation has been carried out in this respect. As a result, it is difficult to steer simplification initiatives towards streamlining the most burdensome bottlenecks. The legal reform should hence be also informed by a proportionate assessment of the envisaged reduced administrative costs associated with the procedures, to ensure enhanced efficiency for the end-user. The construction permit regime should therefore be included in the Government administrative simplification strategy (see Chapters 5 and 11).

When upgrading the legal framework, particular attention should be paid to introducing market-based elements, for instance with regard to expanded and clearly defined risk-based approaches to inspections and to generalised insurance schemes.

Inspections and enforcement by public authorities cannot be carried out everywhere and address everything, and there are many other ways to achieve regulatory objectives. Ensuring timely and full compliance is considered one of the areas where market forces, private sector and civil society actions can be effective and lead to budgetary savings. Chile should consider the institution of certified private actors entrusted with inspection and enforcement functions. This does not imply de-regulating the inspection regimes, but delegating executive tasks to market operators under a transparent and well-defined power regime.

Elements of risk-based approaches to regulating the construction permit regimes are present in the Chilean current construction permit legal framework. However, there is ample margin for expanding the approach to certification and enforcement control so that Chile can meet good international practice. An upgraded risk-based approach to construction permit authorisation would also streamline the inspection regime, which to

date is mainly reactive and not preventive. Targeted and proportionate enforcement should concern both the frequency of inspections and the resources underpinning them (see Chapter 6 above).

In the current framework there is no requirement for mandatory insurance. For Chile, the lack of generalised insurance schemes is particularly problematic in the light of the high risk of natural accidents to which the country is subject. The Government should consider revising the liability and insurance regime in the sector, in particular the idea of introducing mandatory insurance.

The organisational and legal review should specifically consider improvements in urban planning, notably by leveraging functional socio-economic dynamics instead of administrative boundaries. In order to do so, checks and balances should be set up to preserve technical expertise from direct political interference in the execution of administrative tasks.

A further area of challenges pertains to the city planning activity. A first gap that derives from the nature of the current all-embracing legal framework is the fact that the municipal zoning and master plans are not planning documents, which in turns jeopardises inter-communal planning co-operation and, eventually, the overall territorial development policy of the country. Conversely, international good practice suggests that the territory should be designed functionally, i.e. in terms of socio-economic interlinkages and mobility rather than through mere administrative entities. A functional approach to territorial governance would also address structural issues related to the allocation of revenues on the one hand and budget for regional and local development investments on the other. This would help fill the existing lack of integration between planning requirements and financing mechanisms.

An opaque and inefficient administrative system has emerged as a consequence and mirror of the legal and institutional context. The dual (technical and political) accountability of the *Dirección de Obras Municipales* (DOM) within the same municipality is a challenge denounced by many stakeholders and experts interviewed by the OECD, as it triggers dysfunctions and possible takeover. There is a wide-spread shortage of technical capacities in the local public administration combined with superficial knowledge of the legal procedures among professionals.

Chile should reform the system of collecting, processing, circulating and managing information across all public administrations and on the interface with the public. It should continue efforts to digitise the construction permit procedures by activating and diffusing both front office and back office re-engineering, combined with appropriate capacity building.

A further key challenge refers to the availability of comparable information, which puts at risk the transparency, fairness and accountability of the public administration. The flow of information is not structured and automatic, and databases are not systematically interconnected. For instance, relevant central authorities are not necessarily kept updated – or do not themselves collect – statistics on construction permits. Statistics are held both in aggregated and disaggregated forms. However, the underlying data is not collected through consistent approaches, since each developer provides the data by submitting a

form with the characteristics of the permit that he/she is requesting. Transparency and accountability appear also to be undermined, as systematic monitoring and reporting functions do not seem to have been deployed, yet.

Chile should therefore reform the mechanisms of collecting and circulating information across all public administrations, and make it more reliable, efficient and transparent. The Chilean construction permit regime still largely relies on paper-based procedures. Compared to other areas such as e-banking or electronic fiscal declaration, the penetration of ICT and digital government solutions for processing and using construction permit procedures has remained extremely limited.

The recent launch of the *DOM en Linea* project is a welcome initiative that goes in the right direction. It bears enormous potential to ensure a uniform level playing field for all operators along the construction permit procedural chain as well as for the general public. If designed well, digitisation helps keep the promise of enhancing efficiency and transparency and reducing the risk of corruptive behaviour.

Over time, Chile should consider linking the *DOM en Línea* system to other digital government initiatives – such as one-stop shops, or the Citizen´s Office (*Escritorio Ciudadano*) and the Business Desk (*Escritorio Empresa*), which are aimed at easing public access and fostering private sector development and competitiveness through transparent and open source governance (see Chapters 5 and 11).

The digitisation of the procedures is arguably the most cost-effective intervention to trigger short-term change. However, the sector's reform should not be limited to it. To tap its potential fully, the digitisation process should be accompanied and sustained by appropriate capacity-building at all levels of government, and in particular in local administrations.

From a knowledge management perspective, digitising the statistical database and sharing it openly contributes to ensuring data quality control. This in turns enriches the availability of reliable information upon which to develop analytical research and evidence-based policies – not least, for instance, thanks to the development of relevant performance indicators that will eventually underpin monitoring, evaluation and *ex post* evaluation.

A further area addressed in this chapter is the management of natural risks. As generally mentioned also in relation to the urban development policy context, the overall framework for managing risks related to natural disasters is largely insufficient in Chile. The current legal framework does not require the preparation and publication of risk maps. In addition, several institutions with various mandates and hierarchy contribute to data analysis and management plans in a rather confusing and patchy manner. There is no direct, systematic linkage between the products of the activities of these (and other) institutions, nor are there compatible databases to allow such comparison or exchange of data, statistics and information. There is also no interface between those activities and the city planning and territorial management activities, the resources available to conduct appropriate risk assessment studies are scarce. Enhanced information management and digitisation also contribute to improving the arrangements set up in Chile for coping with natural risks.

Notes

1. See www.oecd.org/gov/regional-policy/recommendation-effective-public-investment-across-levels-of-government.htm.
2. Natural resource-intensive economies can be defined as economies in which natural resources account for more than 10% of gross domestic product (GDP) and 40% of exports.
3. http://cndu.gob.cl/.
4. In particular, the experiences of Australia, Brazil, Colombia, Germany, the United States, the United Kingdom and South Africa were reviewed. See Giménez and Ugarte (2013), Vol. 2.
5. Statistics provided by the Government of Chile (January 2016). The sector's total employment figure refers to October 2015: www.ine.cl/canales/chile_estadistico/mercado_del_trabajo/nene/cifras_trimestrales_ASO_2015.php.
6. Data provided by the Government of Chile in April 2015, drawing from statistics by the Central Bank, (2012); INE (2012), CONAMA (2010) and *Cámara Chilena de la Construcción.*
7. For instance, from the official website www.ine.cl/canales/chile_estadistico/estadisticas_economicas/edificacion/series_estadisticas/series_estadisticas.php.
8. The "Ley de Proyecto a la Calidad de la Construcción N°20.703" ("Quality Law") is nonetheless being reviewed to guarantee the quality of construction, creating a National System of Regulation for Independent Reviewers, increasing the level of self-control of private developers and a mechanism of external audition for some construction.
9. Principle 2.4. on Regulatory Policy and Governance (OECD, 2012b) calls governments on "[making] sure that policies and practices for inspections and enforcement respect the legitimate rights of those subject to the enforcement, are designed to maximise the net public benefits through compliance and enforcement and avoid unnecessary burdens on those subject to inspections".
10. Investment going to the regions follows two main channels: sectoral investments by line ministries and, increasingly, regionally defined investments through notably the so-called National Fund for Regional Development (FNDR, *Fondo National de Desarrollo Regional*). The FNDR has traditionally sought to compensate for regions' socio-economic and geographical disadvantages, but the Sub-secretariat for Regional and Administrative Development (SUBDERE) has been closely involved in trying to move the FNDR from a compensatory fund focused on infrastructure provision towards a territorial development fund with more comprehensive goals, though this shift has not yet been fully achieved.
11. This section draws also from the report by the Comisión Provisoria Terremoto 2010, *30 Propuestas Relativas Al Terremoto 27 de Febrero 2010*, 16 June 2010.
12. See www.ide.cl/.
13. The distance to frontier score benchmarks economies with respect to regulatory practice, showing the absolute distance to the best performance in each *Doing*

Business indicator. An economy's distance to frontier score is indicated on a scale from 0 to 100, where 0 represents the worst performance and 100 the frontier.

14. Government of Chile, Questionnaire April 2015.

15. See www.minvu.cl/opensite_det_20140506182426.aspx.

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Chapter 10

Improving the regulatory environment for Chilean SMEs

This chapter describes the importance of SMEs to an economy and how the government of Chile could improve its regulatory framework. It does this by presenting a brief overview of SMEs in Chile and the main institutional actors and agencies involved in SME policy. An overview of SME policy throughout the last few decades is provided based on literature, expert interviews and a dedicated stakeholder survey. An analysis of remaining regulatory barriers to SME start-up and continuity is given, together with a closer look at the policy efforts made to formalise SMEs.

The relevance of SMEs

The importance of SMEs to an economy has been widely acknowledged across the world and this is no less the case in Chile. Generally speaking, SMEs form the largest proportion of enterprises in a country, and lead to both employment and self-employment. In the OECD member countries, for instance, over half of total employment is attributable to SMEs and this is also the case in Chile; over 75% of total employment came from SMEs in 2012 (based on both formal and informal enterprises) (OECD, 2015).

SMEs are also important to the added value of a nation's economy. Amongst OECD countries, between 55% and 75% of added value was attributable to SMEs. On a macro level, a healthy and thriving SME community also leads to economic competition and innovation, leading to growth for a country. SMEs therefore can contribute much to a nation's labour market and economy and further policy attention for these types of enterprises can be extremely fruitful to a country.

There is no standard formula when it comes to designing SME policies for countries. Countries have different characteristics and features which in turn affect the nature of the optimal SME landscape. Indeed the ideal equilibrium rate of business ownership and level of entrepreneurship in a country depend on a number of national characteristics, and both economic and non-economic factors. GDP levels for instance and the stage of development in which an economy finds itself influence the ideal level of entrepreneurship (Carree et al., 2002).

It is therefore important to examine both the economic and non-economic characteristics of a country when designing SME policy so as to achieve the optimum level of added value towards a nation's economy. Governments can contribute to a country reaching and maintaining its equilibrium rate of business ownership by introducing policies which foster low barriers to entry for SMEs. Allowing SMEs more dynamism helps a nation's enterprises to reach the ideal business ownership rate more easily (Carree et al., 2002).

Size is important; the chapter builds on the importance of making a difference between large and micro, small and medium-sized enterprises in the policy and rule-making process. SMEs often differ from larger enterprises in terms of their levels of resources, their characteristics, performance, and growth prospects and also regarding the staff who run them. This has impacts on how SMEs and larger enterprises perceive and work with regulatory and administrative requirements. For SMEs, the time, energy and money involved in understanding all the relevant regulations and administrative requirements for their business is relatively higher than for larger enterprises, since larger enterprises have higher levels of human and financial resources.

For SMEs the trade-off between following administrative procedures compared to carrying out their core business operations are steeper than for larger enterprises. Added to this is the fact that lump sum costs (such as a standard price for administrative documents or notarising), are proportionately greater for SMEs than for larger firms. This is especially true with regard to the diversity in the sectors SMEs work in and the different administrative burdens that they have to address. These issues and others, demonstrate the need for a policy that is specific to SMEs.

The following sections of this chapter first present a brief overview of SMEs in Chile and the main institutional actors involved. An overview of SME policy throughout the last decade is provided based on literature and expert interviews. An analysis of remaining regulatory barriers to SME start-up and continuity is given, together with a closer look at the policy efforts made to formalise SMEs.

Overview of small and medium enterprises in Chile

Definition

Common definitions of SMEs used on an international level vary according to their balance sheet total, or turnover, and/or the number of employees at work in the enterprise. The European Commission classifies SMEs as "enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million" (OECD, 2015). Within this understanding, small enterprises are those both with less than 50 employees and a turnover or balance sheet of less than EUR 10 million. Micro enterprises have less than 10 employees and a balance sheet or turnover of less than EUR 2 million.

While the EU and OECD adopt such definitions, there is no uniform, single definition common to all nations. Canada for instance, considers SMEs as firms with less than 500 employees while other countries use a lower employee threshold; in Israel the limit is 100 employees while in New Zealand the line is set at 19 employees.

There is also diversity in the limit in turnover or balance sheet used to categorise enterprises as SMEs. OECD data shows that the Russian Federation for instance uses a turnover limit of RUB 1 000 million (EUR 16.76 million), while India places upper limits of INR 100 million (EUR 1.38 million) and INR 50 million (EUR 0.69 million) on investment in plant and machinery, and equipment, respectively. In other countries the definition of SMEs depends on the sector in which they operate (OECD, 2015).

The nature of the definition used by a country for classifying its SMEs therefore varies. It can also reflect national level considerations and policy priorities based on the economic or social circumstances of the country in question. The EU definition of the SME size classes is relatively easy to apply and as such contributes to internationally comparable national level data on SMEs and entrepreneurship.

In Chile, the definition of an SME is expressed in terms of annual turnover. According to Law No. 20.416, which sets out specific regulations for SMEs, small and medium-sized enterprises in Chile are therefore defined as follows:

Table 10.1. **Chilean firm size definition**

Firm size (annual turnover)
All enterprises
SMEs (up to UF 100 000)
• Micro (up to UF 2 400)
• Small (UF 2 400 to UF 25 000)
• Medium (UF 25 000 to UF 100 000)
Large (UF 100 000+)

Note: Data includes employer and non-employer enterprises in all industries; UF (*Unidad de Fomento*) is an indexed unit of account that incorporates adjustments based on increases in the general level of prices in the Chilean economy in order to preserve the purchasing power (real value) of assets denominated or indexed to this unit of account. The UF of 9 December 2015 stood at CLP 25 629.09, according to the Internal Revenue Service of Chile www.sii.cl/pagina/valores/uf/uf2015.htm. Therefore, SMEs in Chile are firms with annual sales of up to approx. CLP 2.56 billion (USD 3.64 million).

Source: OECD, (2015a), *Financing SMEs and Entrepreneurs 2015: An OECD Scoreboard. Chile Country Profile.* *http://dx.doi.org/10.1787/fin_sme_ent-2015-en*

SME's in numbers

The most recent data on formally registered SMEs is provided below in order to get a clear grasp of the SME landscape in Chile. The information is partly based on the Survey of Micro Entrepreneurship (*Encuesta de Microemprendimiento, EME*) conducted by the National Statistics Institute and the Ministry of Economy, Development and Tourism; and, on the figures provided by the Internal Revenue Service (*Servicio de Impuestos Internos)*.

Table 10.2. **Firm size distribution in Chile 2006, 2010 and 2014**

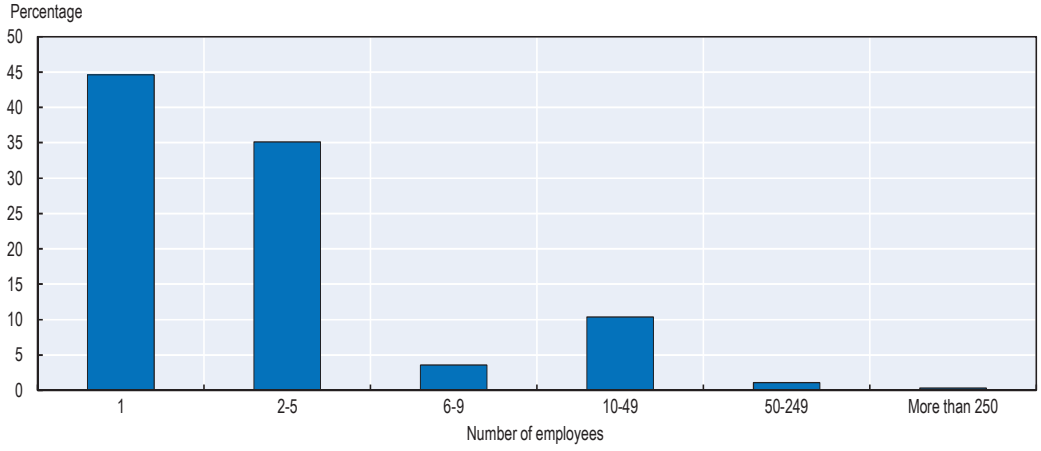
Firm size (annual turnover)	Number 2006	%	Number 2010	%	Number 2014	%
All enterprises	883 211	100	938 113	100	1 045 046	100
SMEs (up to UF 100 000)	752 527	85.2	790 714	84.3	881 857	84.4
• Micro (up to UF 2 400)	608 910	68.9	618 949	66.0	669 515	64.1
• Small (UF 2 400 to UF 25 000)	125 307	14.2	149 545	15.9	184 654	17.7
• Medium (UF 25 000 to UF 100 000)	18 310	2.1	22 220	2.4	27 688	2.6
Large (UF 100 000+)	9 454	1.1	11 219	1.2	13 979	1.3
No sales / Unknown	121 230	13.7	136 180	14.5	149 210	14.3

Source: Internal Revenue Service of the government of Chile. http://www.sii.cl/estadisticas/empresas_tamano_ventas.htm

It should be noted that Chile has a relatively large proportion of informal SMEs. These are not reflected in the statistics on Table 10.2. Indeed this is a point of priority for Chilean SME policy, to get more SMEs, especially micro enterprises to formalise (see also the assessment and recommendations of the current chapter).

A large number of Chilean SMEs do not recruit many employees to work in their enterprises. This is especially true when talking about micro enterprises in Chile. Out of those enterprises which do have employees, the breakdown of number of employees is as follows:

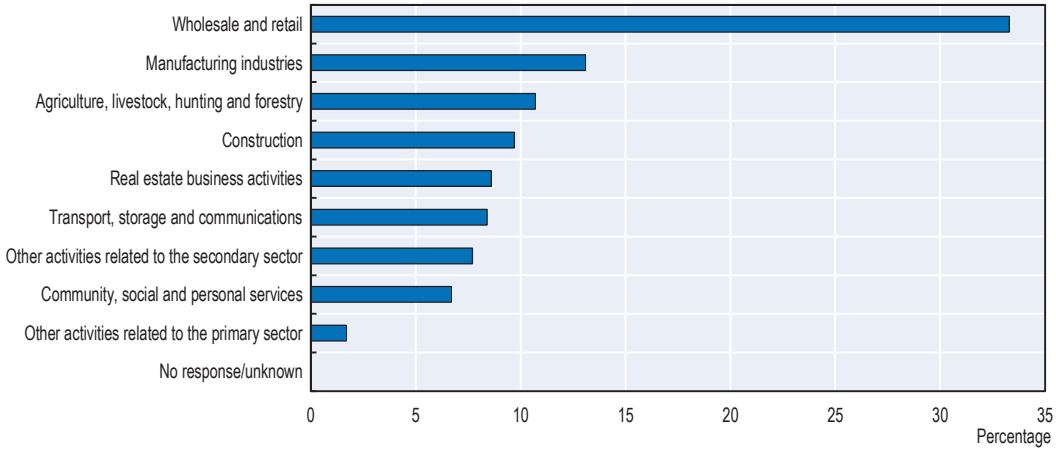
Figure 10.1. **Number of employees amongst Chilean enterprises**



Source: Ministry of Economy, Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013, (2014).

The following figures provide further information as to the main sectors of activity for Chilean entrepreneurs. The data shows that a third of Chilean SMEs are active in the wholesale and retail sector, followed by 13.1% being active in manufacturing industries, and 10.7% being active in the agricultural, livestock and hunting sector; these three groups constitute the largest areas of activity.

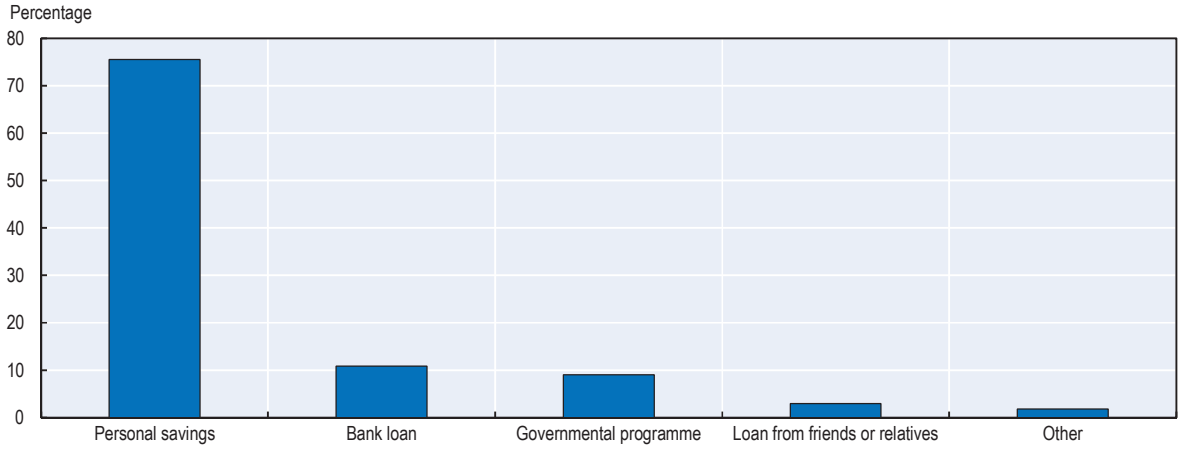
Figure 10.2. **Chilean SMEs according to area of activity**



Source: Ministry of Economy, Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013, (2014).

Regarding the enterprise features of Chilean SMEs, when setting up a business, the main sources of financing come from personal savings (75.5%). Loans from friends or relatives, followed by bank loans, are the second and third most common sources of financing.

Figure 10.3. **Sources of financing used by entrepreneurs at start of an enterprise**



Source: Ministry of Economy, Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013, (2014).

The tables above show the SME landscape in Chile but lack international comparison. International initiatives exist which allow for a comparison of a country and its given SME environment such as the Global Entrepreneurship Monitor (GEM). The GEM is an initiative which fosters international comparisons between member countries, allowing policy makers and other stakeholders the possibility of assessing the dynamics and behaviour of entrepreneurship in several countries. The GEM methodology is explained in Box 10.1.

Box 10.1. **Internationally comparable information: the Global Entrepreneurship Monitor**

The Global Entrepreneurship Monitor (GEM) is an annual monitor of SMEs across the world. Based on two sets of surveys carried out by member nations on an annual basis, national level insights are generated in an internationally comparable manner. The Adult Population Survey (APS) and National Expert Survey (NES) are used as the key inputs for the GEM.

Based on both surveys, national and global information on the progression of entrepreneurs, their dynamics, and characteristics are collected. As such, the GEM provides an idea of how SMEs perform compared to an international benchmark as well as providing insights and concrete information for policy makers.

- The APS provides indicators of entrepreneurial activity, entrepreneurial attitudes, and entrepreneurial aspirations within an economy; it includes a sample of at least 2000 respondents of 10 years and older.
- The NES involves interviewing at least 36 experts in each participating country and asking their opinions on nine topics which have an impact on entrepreneurial activity.

The GEM examines several variables regarding entrepreneurship. Some of the key aspects include:

- **Total early-stage entrepreneurial activity (TEA):** Percentage of individuals aged 18-64 who are either a nascent entrepreneur or owner-manager of a new business.
- **Nascent entrepreneurship rate:** Percentage of individuals aged 18-64 who are currently a nascent entrepreneur, i.e., actively involved in setting up a business they will own or co-own; this business has not paid salaries, wages, or any other payments to the owners for more than three months.

Box 10.1. **Internationally comparable information: the Global Entrepreneurship Monitor** (*cont.*)

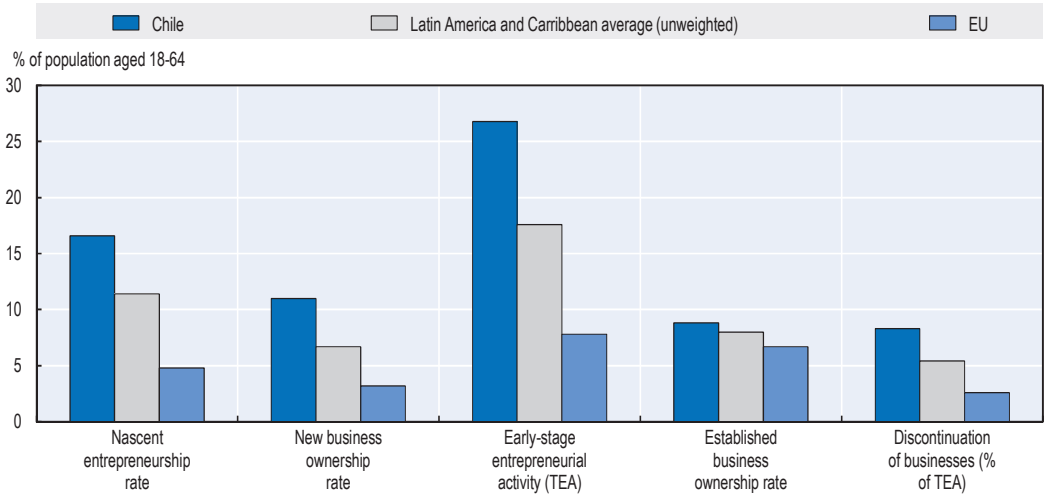
- **New business ownership rate:** Percentage of individuals aged 18-64 who are currently an owner-manager of a new business, i.e., owning and managing a running business that has paid salaries, wages, or any other payments to the owners for more than three months, but not more than 42 months.
- **Established business ownership rate:** Percentage of individuals aged 18-64 who are currently an owner-manager of an established business, i.e., owning and managing a running business that has paid salaries, wages, or any other payments to the owners for more than 42 months.
- **Business discontinuation rate:** Percentage of individuals aged 18-64 who, in the past 12 months, have discontinued a business, either by selling, shutting down, or otherwise discontinuing an owner/management relationship with the business. Note: this is NOT a measure of business failure rates.

Source: Panteia, (2015), Global Entrepreneurship Monitor – the Netherlands 2014, Zoetermeer, the Netherlands. www.gemconsortium.org/report/49274

Information from the 2014 GEM shows how the rate of nascent and new business ownership rate, and early stage entrepreneurial activity in Chile are higher for the Latin American region and the EU. However, the discontinuation of business rate still needs to be taken care of.

Figure 10.4. **Phases of entrepreneurial activity in GEM economies (2014)**

By geographic region, % of population aged 18-64 years



Note: Unweighted average.

Source: GEM (2015), *Global Entrepreneurship Monitor: 2014 Global Report*, Global Entrepreneurship Research Association, London Business School, www.gemconsortium.org/report (accessed 25 February 2016).

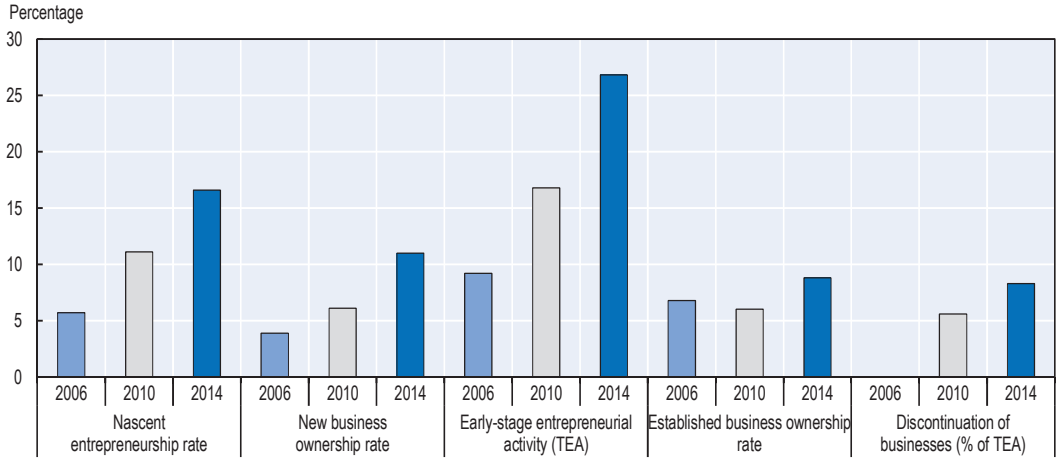
The degree, to which the higher rates of nascent and new business ownership can be attributed to Chile's renewed policy efforts regarding SMEs, is difficult to establish. However, it is noteworthy that the new business ownership rate exceeds the established business ownership rate. The GEM reports that in cases where these two rates are comparable, this reflects a relatively dynamic SME environment (GEM, 2011).

In the case of Chile the rate of new businesses exceeds that of established businesses, suggesting a renewed optimism and drive in the Chilean SME community. But further insight into the composition as well as more encompassing statistics would provide an even more accurate impression of the SME landscape in Chile. As the GEM uses self-reporting, it is not clear whether informal SMEs have been included in these figures. It seems likely that while these numbers provide further insight into the composition of Chilean SMEs, they do not present a complete impression.

As it is difficult to ascertain whether SME policy and other developments, or other national trends have affected Chilean SMEs, Figure 10.5 presents an overview of how the entrepreneurial activity in Chile has changed over the last decade regarding the GEM indicators. This table shows how there has been an increase on entrepreneurial activity across all criteria. This suggests that the environment for SMEs in Chile has improved since 2006.

Figure 10.5. **Development in entrepreneurial activity Chile, 2006-2014**

Percentage of population aged 18-64

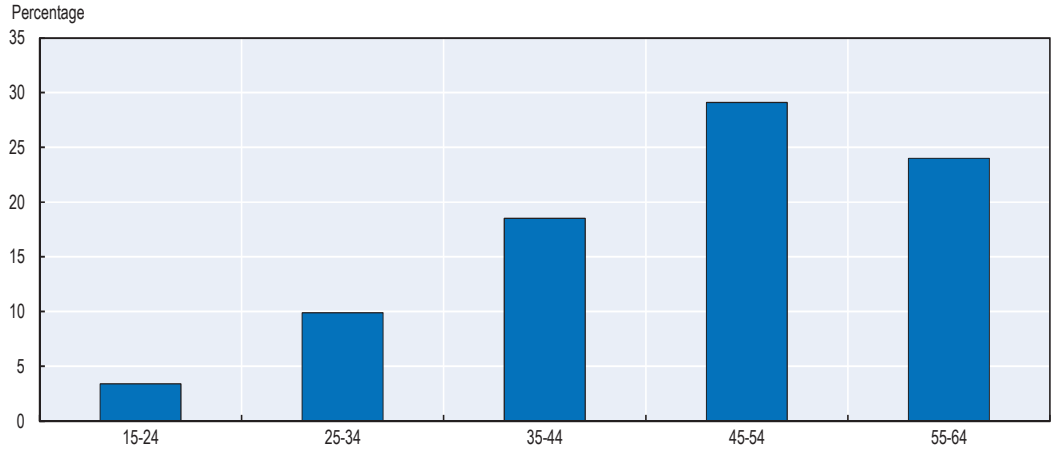


Source: GEM (2007), *Global Entrepreneurship Monitor: 2006 Global Report*, Global Entrepreneurship Research Association, London Business School; GEM (2011), *Global Entrepreneurship Monitor: 2010 Global Report*, Global Entrepreneurship Research Association, London Business School; GEM (2015), *Global Entrepreneurship Monitor: 2014 Global Report*, Global Entrepreneurship Research Association, London Business School, www.gemconsortium.org/report (accessed 25 February 2016).

Characteristics of entrepreneurs

The Ministry of Economy, Development and Tourism, through the EME, also provides information on the characteristics of entrepreneurs. The data demonstrates that in Chile some 62% of entrepreneurs are men while 38% are female. This compares to a general labour force distribution of 59.2% men compared with 40.8% women.[1]

Figure 10.6. **Age distribution of entrepreneurs in Chile**

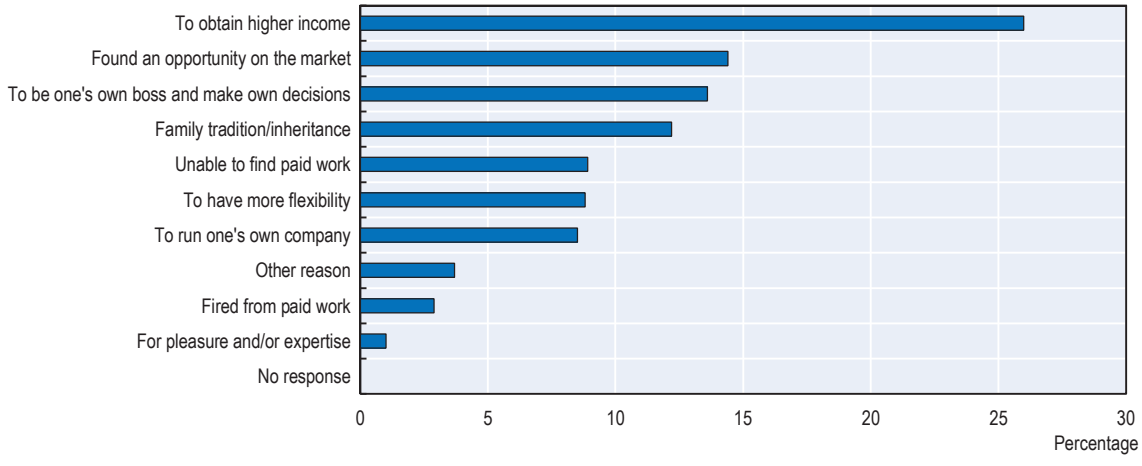


Source: Ministry of Economy, Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013, (2014).

Start-ups and growth barriers

As shown in Table 10.2 in the beginning of the section, many enterprises fall under the category of micro enterprises in Chile; it is often the case that they are family-owned and managed. The individual opinions of one person (the head of the family) are thus quite influential in the start-up and growth of an enterprise. In many cases the scale of the enterprises starts and stays within the micro category. The characteristics of the entrepreneur, such as their educational level, literacy, financial capital, age and geographical location, can all affect the nature and continuity of the business. In Chile such aspects can vary widely across the country leading to a very heterogeneous SME universe (Goldberg and Palladini, 2008).

Figure 10.7. **Main reasons for starting an enterprise (formal or informal)**

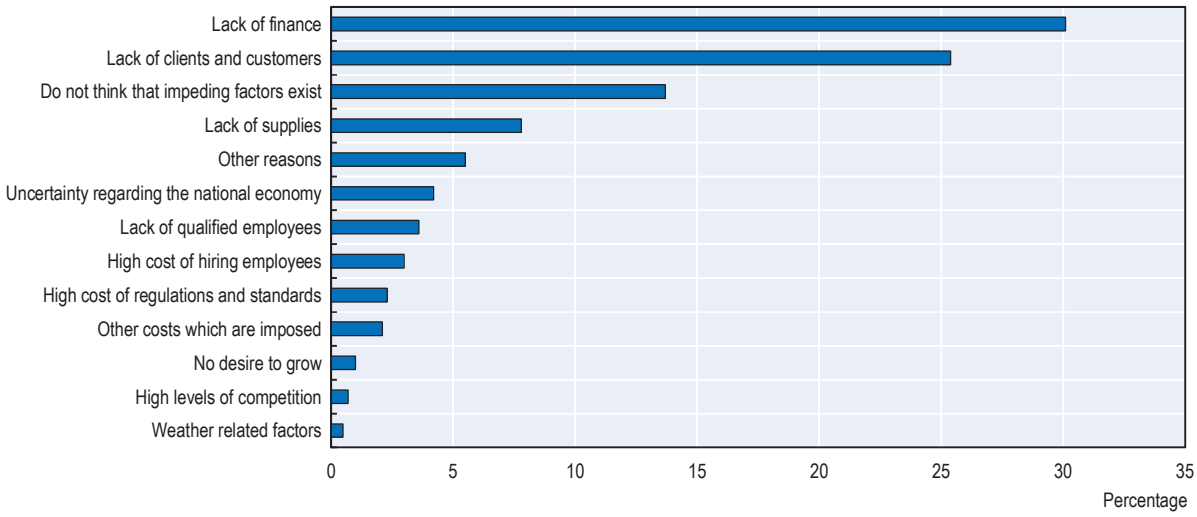


Source: Ministry of Economy (2014), "Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013".

Furthermore, the EME Survey shows that 34.1% of respondents declare having started out of necessity, i.e. family tradition or inheritance, they were unable to find a job, they were recently fired from a paid position or they needed more flexibility. On the other hand, 65.9% of respondents declare that they initiated their start-up in order to seize the opportunity, i.e. obtain higher income than their current jobs, found a niche with a good return rate, to be their own boss, or merely for the experience.

While growth of an enterprise sounds like an intuitively positive thing for an entrepreneur, not all entrepreneurs are able to, nor desire, to lead their enterprises into growing past a particular point. The two main factors impeding growth however, appear to be a lack of funding (30.1%), followed by a lack of clients and customers (25.4%) as can be seen in Figure 10.8. A significant 13.7% of respondents indicated that they did not think any impeding growth factors existed.

Figure 10.8. **Main factors impeding the growth of an enterprise**



Source: Author's elaboration with data from Ministry of Economy (2014), Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013.

Formal and informal enterprises

Having sketched a picture of the status of Chilean SMEs and entrepreneurs, the following section takes a closer look at formal and informal enterprises in Chile. This issue of formal enterprises is an important point of policy focus in Chile. Informal enterprises do not pay taxes, and are less likely to comply with labour law and other regulations that are costly for formalised SME´s. Moreover, informal enterprises are subject to inspections to a lesser extent than formal enterprises.

It is impossible to deny that for a segment of the population the informal sector remains as their only alternative to earn an income. Organisations like the Solidarity and Social Investment Fund (*Fondo de Solidaridad e Inversión Social, FOSIS*) which is an agency focusing on poverty reduction and the Agricultural Development Institute (*Instituto de Desarrollo Agropecuario, INDAP*) argue:

- There is a segment of informal micro enterprises that have a higher risk of failure if they are formalised due to their inability to withstand delayed payments, pay taxes and comply with the basic legal requirements.
- In many cases, informal entrepreneurs would be unable to find formal employment.
- Enforcing the law in this domain in rural areas would probably result in people moving to urban areas.
- Many of the informal entrepreneurs are functionally illiterate.

There is much debate over current programmes that benefit informal enterprises (amongst others). INDAP has 25 programmes and tools that cover three dimensions: capacity-building, through technical advice and training; investment financing micro entrepreneurs or requiring farmers to develop their business (i.e. irrigation, animals, equipment, etc.) and working capital (under very special conditions). The beneficiaries of the programme are family businesses, some of which might not be formal. There are two groups of users: micro entrepreneurs with a defined business objective and a large group (70% being farmers) which relies on it for subsistence by selling their surplus.

Support is given through programmes whose rules and regulations are defined by INDAP through resolutions that establish the objective of the programme, target audience, characteristics of the supports, etc. They come in the form of annual programmes and they are renewed every year. INDAP has negotiated agreements with many municipalities, for example those concerning training programme for farmers.

Where INDAP is active in rural areas, FOSIS works in the urban environment. Similarly to INDAP, it provides seed capital (also to informal enterprises), support and training. The aim is to help start-ups (not registered) generate sufficient income and develop sufficient knowledge and expertise to run a formal enterprise, or be employed. Several experts argue that the support system tends to create perverse incentives to remain in a support situation rather than move forward.

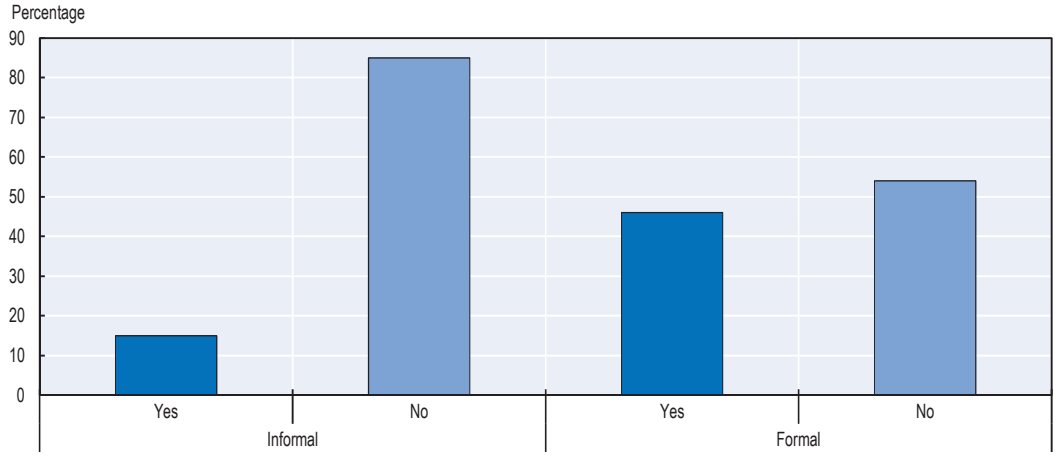
In Chile, according to data collected by the Ministry of Economy, Development and Tourism, 51.6% of enterprises are formal, while 48.4% remain informal. Data also indicates that formal enterprises tend to generate more employment as well.

Table 10.3. **Enterprises in Chile according to formal status**

Status	%
Formal enterprises	51.6
Informal enterprises	48.4

Source: Ministry of Economy (2014), "Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013".

Figure 10.9. **Enterprises in Chile according to formal status and employment generation**

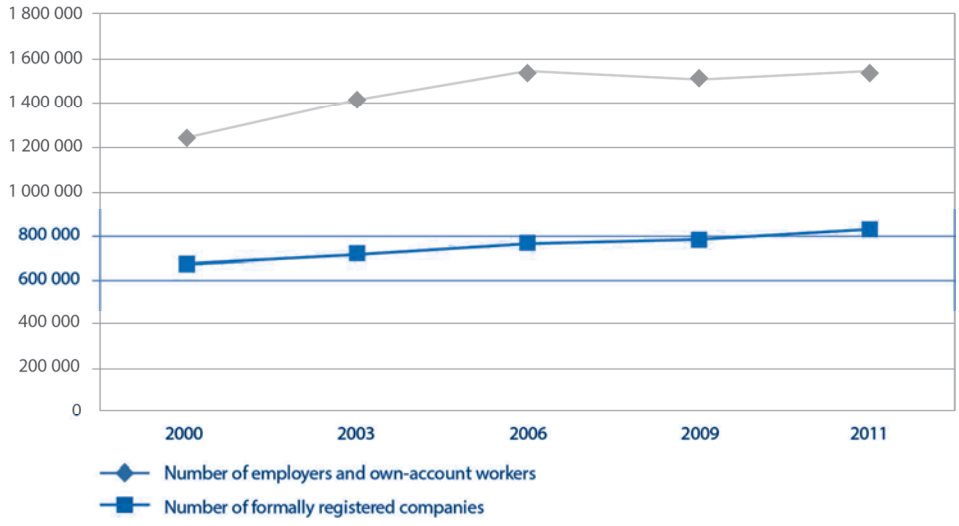


Source: Ministry of Economy (2014), "Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013".

Looking at other sources of information, and how informal and formal enterprises have developed, the rate of formalisation in Chile in 2013 kept a steady pace as opposed to other Latin American countries. Based on estimations from the national household survey in 2011, some 1 534 485 people identified themselves as business owners and own account workers, also known as self-employed. When taking into account the 825 366 businesses registered with the tax authorities, it shows a formalisation rate of 54% according to data from the International Labour Organisation.

This rate of formalisation was similar ten years previously, when the national household survey recorded 1 241 688 business owners and own-account workers compared to 673 697 businesses registered formally with tax authorities. This also translated to a formalisation rate of 54%. The development of the formalisation rate is illustrated in Figure 10.10 (ILO/FORLAC, 2014).

Figure 10.10. **Number of productive units and formal enterprises in Chile, 2000-2011**

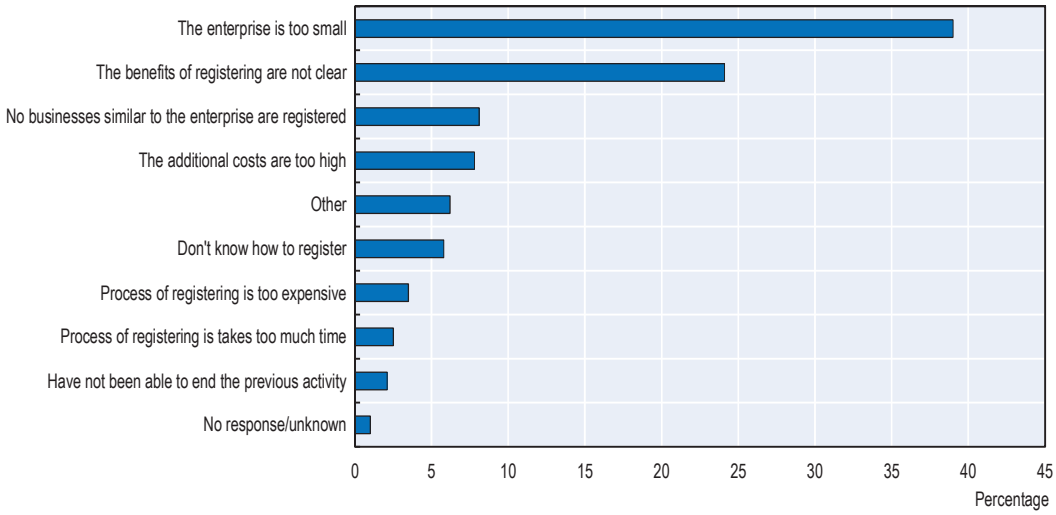


Source: ILO/FORLAC (2014).

Since the launch of the public EME reports on SMEs by the Ministry of Economy, Development and Tourism, formalisation has been an important component of the study series. During the second report on SMEs in 2012, there were some 1 730 000 enterprises in Chile, of which 59% were informal (translating to some 1 001 730 enterprises). Looking at the data for 2014, the level of formalisation amongst enterprises has improved. It should be noted here that under the second SME report in 2012, an enterprise is understood to be formal as soon as its activities are registered by the Internal Revenue Service. The method of investigating and recording informal SMEs and how these are represented in reports differs somewhat, so that comparisons of formalisation data over the years should be made care.

In order to remedy the level of informal enterprises and to get these businesses to formalise, it is important to understand why these entrepreneurs choose to stay informal to begin with. Figure 10.11 provides an overview of the main reasons for SMEs to stay informal.

Figure 10.11. **Main reason for having an informal enterprise**

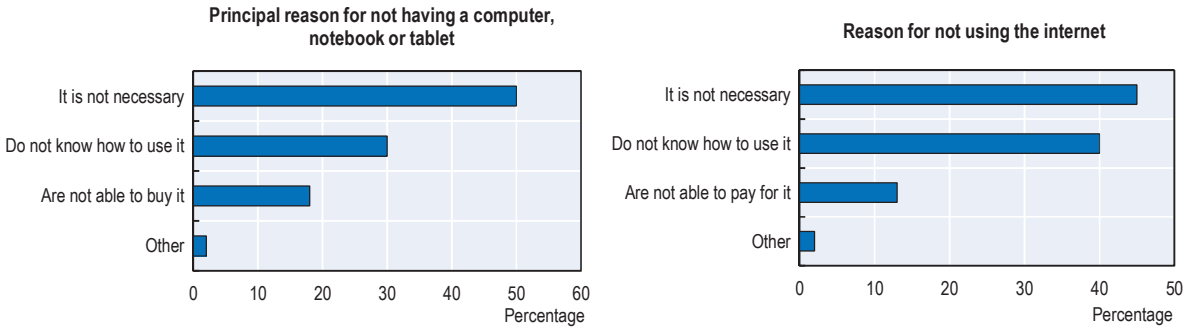


Source: Author's elaboration with data from Ministry of Economy, Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013, (2014).

Use of ICT

In Chile, the majority of entrepreneurs do not use the internet. From the respondents, 36.3% indicate that they do use the internet while 63.7% indicate they do not. It is also important to note that a large number of entrepreneurs in Chile do not own a computer, tablet or notebook. Specifically, 68.2% do not own such devices while 31.8% do.

Figure 10.12. **Use of internet by entrepreneurs**



Source: author's elaboration with data from Ministry of Economy (2014), Development and Tourism, Results from the third Survey of Micro Entrepreneurship 2013.

The information above demonstrates that among Chilean entrepreneurs, a large proportion do not use communication technologies or internet, which is an important element to bear in mind when designing policies to promote entrepreneurship. Especially for informal entrepreneurs, who generally are more likely to live in less developed areas, this lack of internet and digital devices should be borne in mind when designing policies on formalization, see also Chapter 11.

Institutional environment for SMEs

The following paragraphs describe SMEs in Chile's institutional context. The main organisations at public and private level involved in Chilean SME policy making are described below, along with insights into their main activities. The impact these organisations have on policy making is discussed towards the end of the section.

Government institutions

The Ministry of Economy, Development and Tourism is the main Ministry in charge of designing, monitoring and evaluating the implementation of public policies to promote the competitiveness of micro, small and medium-sized enterprises and entrepreneurship. The Small Size Enterprise Division (*División de Empresas de Menor Tamaño, DEMT*) is the division responsible for promoting actions to improve the ecosystem of entrepreneurship and competitiveness of SMEs. Their work is focused on the development of public policies and coordinated measures to facilitate the creation, closure, operation and financing of SMEs in Chile. It has a number of areas of activity including the reduction of administrative burdens, improving access to finance, promoting access to markets, and simplifying laws relevant to SMEs.

While the design and monitoring of the SME policy is the responsibility of the Ministry of Economy, Development and Tourism, other ministries are involved in implementing regulations and instruments relative to SMEs and their own areas of activity. These include the Ministry of Agriculture, Ministry of Finance, Ministry of Mining, Ministry of Foreign Affairs and Ministry of Labour.

Regarding SMEs there are a number of institutions that are affiliated with different ministries with very specific roles. The state bank in Chile, *Banco Estado* is also a key public organisation involved in SME policy as it contains its own specific fund for providing loans to SMEs, notably small and micro enterprises. Besides this, the bank also

manages the SME Credit Guarantee Fund (*Fondo de Garantías para Pequeños Empresarios, FOGAPE*).

Most of the public organisations involved in SME policy are dependent on the ministries. Other examples of such organisations focussing on SMEs also exist:

- CORFO (*Corporación de Fomento de la Producción*) is the Economic Development Agency, functionally dependent to the Ministry of Economy, Development and Tourism. More details are provided below.
- SENCE (*Servicio Nacional de Capacitación y Empleo*), is the National Training and Employment Service, a government agency of the Ministry of Labour; its objective is to upgrade the skills of the Chilean workforce.
- PROCHILE is the National Agency for Export Promotion. Its mission is to promote Chilean exports and facilitate entry of Chilean enterprises with exporting into international markets.
- CONYCIT (*Comisión Nacional de Investigación Científica y Tecnológica*) is the National Commission for the Scientific and Technological Research, that manages amongst others the Science and Technology Development Fund (*Fondo de Fomento al Desarrollo Científico y Tecnológico, FONDEF*) and intended to finance pre-competitive research and development and technology projects carried out jointly by universities, technology institutes and the private business sector.
- SERCOTEC (*Servicio de Cooperación Técnica*) is the Technical Cooperation Service, intended to support the management capacities of the Chilean micro and small enterprises. SERCOTEC designs and implements its own programmes but also acts as an intermediation agent for some of CORFO's matching-grant programmes (providing technical support to SMEs).
- FOSIS (*Fondo de Solidaridad e Inversión Social*) is a governmental services affiliated with the Chilean government. Its aim is to help develop and implement strategies to lift people out of poverty and vulnerable living situations. It is aimed at individuals, families and communities in order to reduce inequality.
- CIE (*Comité de Inversiones Extranjeras*), the Foreign Investment Promotion Agency, is the governmental body responsible for promoting Chile on the international market to attract investment interest from abroad. It acts as a bridge between foreign investors and national business opportunities.

Additionally, there are several institutions specialised in specific sectors, such as:

- INDAP (*Instituto de Desarrollo Agropecuario*) is the Agricultural Development Institute, an autonomous institute under the Ministry of Agriculture, created to support the development of family farming.
- SERNATUR (*Servicio Nacional de Turismo*) is the National Tourism Service which is focused on tourism activities.
- SERNAPESCA (*Servicio Nacional de Pesca y Acuicultura*) is the National Fisheries Service which is focused on the fishing sector.

The main agency dealing with SMEs in Chile is CORFO; it administers the largest portfolio of grants and credit programmes covering SMEs in a wide array of different

domains. CORFO is functionally dependent of the Chilean Ministry of Economy, Development and Tourism. In the development of its activities CORFO takes into account the general goals set by the Chilean government.

The current mission of CORFO is to "improve the competitiveness and productive diversification of the country, via the improvement of investment, innovation and entrepreneurship, while at the same time strengthening human capital resources and the technological capabilities, so to reach a sustainable and balanced geographical development while improving the position of Chile in the world economy". Meanwhile, the vision of CORFO is "to be a world-class agency intended to reach the goals set up for its mission, setting up collaborative productive systems and high potential sectors so as to project Chile into the new knowledge 21st Century economy". In practical terms, the target group of CORFO is all actors related to the productive system of Chile, with a special focus on SMEs in all stages of development and irrespective of sector considerations. The major fields of action of CORFO are:

- Promotion of innovation and upgrading of the technological development of the business sector.
- Modernisation of enterprises to improve their competitiveness with a focus on business networking and co-operation amongst enterprises.
- Improvement of the enterprises' management to increase access to various markets.
- Financing and development of financial instruments to attend to the needs of enterprises (new, small and exporting enterprises).
- Improving regional productive development by stimulating private investment and the development of emerging sectors. (Panteia/ILO, 2015)

As part of its activities, CORFO offers a comprehensive supply of support measures and provides enterprises with options that depend on their stage of development. The emphasis of CORFO's support is on four main domains: *i)* relief of financing constraints for SMEs (through credit guarantees and special long-term investment credit programmes); *ii)* technical cooperation programmes of various kinds; *iii)* promotion of associative endeavours by small firms and; *iv)* support of innovation (both at firm level and between groups of enterprises, business associations and universities). Specifically, the current main activities of CORFO can be grouped as follows:

- Support for the development of new enterprises and entrepreneurship in general. Relevant projects in this domain include Start-up Chile, which aims at supporting start-ups initiated by Chileans or foreigners; Seed Capital Support that channels grants to incubators; and, the Support for Creating an Entrepreneurial Environment (*Programa de Apoyo al Entorno)*, intended to subsidise up to 80% of a new business project.
- Support for innovation, including Research and Development (R&D) activities. CORFO is the principal public agency in charge of promoting the innovation in all types of enterprises, both consolidated and new enterprises. It also has important lines of support intended for research centres. Relevant examples of programmes include the R&D Tax Credit Law (for favourable taxation of R&D investments), the International Centres of Excellence in R&D (intended to foster the establishment in Chile of International Centres of Excellence in R&D,

technology transfer and marketing activities) or the Technology Consortiums for Innovation 2.0 (intended to support joint R&D activities conducted by groups of enterprises)

- Support for the improvement of competitiveness of enterprises. CORFO helps small enterprises to strengthen the management of entrepreneurs through the development of skills and capabilities, and co-financing of investment activities (i.e. the Programme of Local Enterprise/*Programa de Emprendimiento Local* or a programme of grants to learn English). CORFO also promotes the integration of production chains of suppliers to improve and stabilise the commercial links with its clients (the Supplier Development Programme/*Programa de Desarrollo de Proveedores*).
- Support the access of SMEs to finance. CORFO develops and runs programmes to facilitate the access of enterprises to funding for productive activities. CORFO operates through banks and other financial institutions providing resources and credit risk coverage for the funding of productive activities by private companies and individuals. Examples of relevant activities include a programme of CORFO-Guarantees, special loans for micro and small enterprises, a Seed-Angel-Venture Capital Programme, risk capital funds, business angel networks, etc.

CORFO collaborates with other public agencies, public and private institutes and industry associations in the implementation of many programmes. For instance, and in the case of financial assistance programmes, CORFO operates through banks and other financial institutions providing resources and security for the funding of productive activities by private companies and individuals. In the case of some innovation and regional programmes, CORFO directly manages the delivery of these programmes.

The design of its SME policies follows a systematic planning and analysis process, involving stakeholders to identify priority areas and the best way to achieve these priorities. CORFO is also obliged to have regular evaluations and to report its activities to the relevant stakeholders. The extent to which all of its activities are made public is not clear at this point. Furthermore, the organisation is evaluated by external partners, such as the University of Chile.

Regarding beneficiaries of the programmes, participation has steadily increased. For instance, the number of beneficiaries of CORFO programmes increased from 96 295 in 2009, to around 270 000 in 2013. Additionally, up to 96% of credits, guarantees and subsidies went to SMEs. These statistics and the fact that CORFO's budget and scope of activities are increasing, along with the promotion for these SME programmes, suggest that CORFO is performing well. However, when examining stakeholder inputs for this study, it appears there is still some way to go in that many SME associations and their members continue to perceive administrative barriers and access to finance as key obstacles to entrepreneurship. The lack of a systematic implementation of programmes at the municipal level and the inadequate dissemination of information are also cited as problems for SMEs. Therefore CORFO, though performing well, has a challenge concerning the promotion and mass communication of its programmes and policies at subnational level in Chile.

Though CORFO acts as the main governmental body responsible for SME policy, its role and actual contribution towards SME participation and consultation remains unclear even though its mandate is primarily the development and implementation of SME policy. Taking into consideration SME associations' views it becomes apparent that there

is a distinct feeling that the representation of SMEs through associations is relatively weak where the government is concerned. This is the case, despite organisations like CORFO's SMEs Advisory Board (*Consejo Asesor MIPYME*), or the Ministry of Economy, Development and Tourism's National Advisory Council for SMEs (*Consejo Nacional Consultivo de la Empresa de Menor Tamaño*), suggesting that the awareness of these public organisations is relatively low amongst the SME associations.

According to a small survey held in 2014 amongst entrepreneurs by PROPYME[2] amongst 474 participants,3.76% did not belong to any form of association. Anecdotal evidence from the survey suggests that there is apparently not much faith in the ability of associations to represent SMEs at national level. Apart from this evidence suggesting that the representative power of SME associations is relatively low in Chile, stakeholders also claim that their negotiating power is relatively weak. This is predominantly due to the heterogeneity of SMEs across Chile and the atomisation of associations and interest groups; there is not much basis for speaking with a unified voice at national level.

Besides this, it is also difficult to gauge how regularly and systematically these SME associations meet, plan and are involved in policy making at the national level. It is therefore difficult to draw concrete conclusions regarding the role of SME associations at national policy level. On the one hand, there are state organisations active for promoting the interests of entrepreneurs, while SME associations do not appear to be aware of many of these organisations or do not feel heard and represented by those public organisations they are aware of.

SME representation and stakeholder engagement

A small number of SME's are members of a representative organisation. This of course hampers the power these organisations can exert at national level to ensure a fair environment to do business in. Especially when compared to large enterprises that – allegedly – have a very good access to politicians and policy makers as well as larger resources. As a result, the level of representativeness of SME associations and their negotiation power regarding consultations on SME policy appears to be limited.

The SME representative organisations are said to be divided amongst them due to political factors. Also, many associations are fragmented and represent specific groups and /or regions. Several organisations have poor representation power but many leaders, reflecting an organisational structure of an "inverse pyramid". Most organisations cannot afford to invest in training, causing management and staff to lack certain competences.

The associations are generally not used as a communication channel between the public sector and the SMEs. Moreover, from the governmental side, active stimulation of participation through active consultation processes is rare, though recently there appears to be some improvement regarding this situation. Some examples are the working committees that the government promoted in order to consult SME associations on their opinion of the Fiscal and Labour Reform, the National Council for the Small and Medium Enterprise (*Consejo Nacional Consultivo de la Empresa de Menor Tamaño*) that the Ministry of Economy, Development and Tourism initiated and the open public consultation prior to publishing a new regulation by the Intellectual Property Institute (*Instituto Nacional de Propiedad Industrial, INAPI*). However, these are some isolated examples that are not illustrative of structural government policy. The SME Statute (Law No. 20.416, sets the necessary regulatory framework, but implementation falters) as discussed in detail in Chapter 4 of this review.

Regulatory environment for SMEs

SMEs are a diverse and heterogeneous category of enterprises that contrast with the necessities of larger enterprises as discussed in the beginning of this chapter. Given these facts, policy makers are increasingly developing and applying more targeted policy approaches which recognises and seeks to tailor policy to these types of enterprises.

Due to the influence that national policy exerts on the nature and dynamics of entrepreneurship in a country, the European Commission has distilled various approaches to policy making for SMEs into 10 key principles presented in the Small Business Act in 2008. These 10 key principles can be applied when developing policies aimed at SMEs so that policies contribute bringing added value to the EU, create a level playing field for SMEs and improve the legal and administrative environment in Europe as a whole. (European Commission, 2008).

Box 10.2. **10 principles to guide the conception and implementation of policies both at EU and Member State level**

1. Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded
2. Ensure that honest entrepreneurs who have faced bankruptcy quickly get a second chance
3. Design rules according to the "Think Small First" principle
4. Make public administrations responsive to SMEs' needs
5. Adapt public policy tools to SME needs: facilitate SMEs' participation in public procurement and better use State Aid possibilities for SMEs
6. Facilitate SMEs' access to finance and develop a legal and business environment supportive to timely payments in commercial transactions
7. Help SMEs to benefit more from the opportunities offered by the Single Market
8. Promote the upgrading of skills in SMEs and all forms of innovation
9. Enable SMEs to turn environmental challenges into opportunities
10. Encourage and support SMEs to benefit from the growth of markets

Source: European Commission, 2008, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "Think Small First"- A "Small Business Act for Europe", [COM (2008) 374 Final], Brussels. Also available at: http://eur-lex.europa.eu/legal-content/en/txt/pdf/?uri=celex:52008dc0394&from=en.

The third principle, "Think Small First" is one of special importance in the EU Communication on the Small Business Act. This principle points to the importance of also acknowledging the differences within micro, small and medium enterprises. The needs and challenges faced by a micro enterprise can differ from a small enterprise, and more so from a medium enterprise. These different needs require different, targeted policy responses. This notion has also been enshrined in the Small Business Act, accompanied by a series of concrete activities and recommendations for both EU and the Member State policy makers to undertake.

The 10 principles established by the EU for policy making for SMEs have been mentioned by other international organisations such as the OECD. These principles have a broad, international relevance and usefulness and as such, these 10 principles are also used by the OECD in its policy research and analysis. This widespread use further demonstrates the utility of these principles in policy making not just for Europe, but globally as well.[4]

Another internationally applicable tool to improve the regulatory environment for SMEs is measuring burdensome regulations and simplifying them with the use of the Standard Cost Model (SCM). This instrument constitutes a tool for identifying and reducing the administrative burden and has been applied across OECD countries. The SCM involves a relatively straightforward methodology for identifying and quantifying the costs and time involved in administrative and regulatory requirements. These insights on the costs and time involved are provided for both the aggregate as at a regulation-specific level. This tool is therefore useful in generating insights which act as input for targeted policy interventions, as well as helping to monitor the effects of policies and reforms. The tool can be applied and adapted to different national contexts and regulatory environments. The broad applicability is demonstrated in its use across EU, OECD and other countries (World Bank, 2010).

The following sections of this chapter first present a brief overview of SMEs in Chile and the main institutional actors involved in SME policy. An overview of SME policy throughout the last few decades is provided based on literature, expert interviews and a dedicated stakeholder survey. An analysis of remaining regulatory barriers to SME start-up and continuity is given, along with a closer look at the policy efforts made to formalise SMEs.

SME Policy in Chile

During the last few decades Chile has seen several cycles of reforms across a range of policy areas, spanning the social and economic domains. Regarding economic and SME policies, there has been an increase in policy attention aimed at improving the business environment and promoting micro, small and medium enterprises.

Since the 1990s, there has been recognition of the value of a thriving business environment, with emphasis on the importance of SMEs in this context. SMEs form sources of employment, and can boost productivity, competition and innovation. In doing so, SMEs can help to increase social welfare and reduce poverty, as well as increase contributing to a healthy and growing economy. General policy trends have included the improvement of the regulatory framework to be more favourable to business. There have been impulses to improve the enforcement mechanisms of regulation relating to business and institutions set up to help promote competitiveness and to enforce anti-trust regulation (Goldberg and Palladini, 2008). In addition to this, the procedures for declaring bankruptcy have been simplified and improved; and steps were taken to improve the protection of creditors' rights.

Policy trends: 2000s – 2010s

A series of new policies and programmes were set up to further improve the business environment and to facilitate SMEs. These developments tended to focus on reducing administrative burden and promoting better access to credit, given that these particular aspects persevered as some of the main obstacles to entrepreneurship.

Concerning access to credit, financial services and investment, larger and medium sized firms tended to have more access to credit during the late 1990s. The Chilean government set up a series of financial programmes aimed at SMEs, such as the Guarantee Fund for Small Entrepreneurs (*Fondo de Garantía para Pequeños Empresarios*, *FOGAPE)*. This fund facilitates access to credit for SMEs, especially for smaller firms or those with insufficient credit guarantees, promoting both long and short term loans. The FOGAPE is one of the larger guarantee funds and by 2003, 16 financial institutions were providing guarantees through this fund.

Law No. 19.749 relating to family-owned enterprises was revised and streamlined to improve start up and licensing procedure for family-owned, home-based micro enterprises. Given the high proportion of family-owned micro enterprises, special legal attention was given to this group of business owners in 2001 when the law came into force.[5] The law introduces an official term and type of taxpayer, the "micro family enterprise", which is subject to corporate tax based on a presumed income. Furthermore, micro family enterprises are exempt from certain legal requirements when setting up a business (i.e. regulations on food health and the production of fumes, noise, smoke or odors which could contaminate products still apply for safety reasons).

Besides this, the Labour Code was revised in 2001 to remedy the relative lack of knowledge regarding labour provisions, especially for micro, small and medium sized enterprises, business owners. Programmes were set up to improve this, including:

- *Multas por Capacitación,* was a programme where labour inspection fines were substituted by training so as to reduce the disincentives around formalising an enterprise and to improve the quality of employment offered by SMEs.
- *Programa de Buenas Prácticas Laborales en Mipymes,* a programme for good practices in labour policy was started. This programme provides technical assistance in good practices regarding labour regulations so that all in all, policy efforts were made to acquaint entrepreneurs with labour policy and to avoid them receiving fines due to lack of knowledge. A special fund was set up to finance these programmes in 2008, the Social Security Education Fund.
- The *Previred Portal*, established in 2002, was launched by a group of private pension funds in Chile. The aim was to reduce administrative burdens linked to social security payment by allowing companies to register their employees and to transfer relevant social security contributions in one monthly payment. This was to reduce the administrative burden and complexity for entrepreneurs.
- Regarding taxation and the administration involved in properly organising a company's taxes, an Electronic VAT Invoicing System was introduced in 2002. This system allows business owners to receive and submit invoices online so as to make VAT invoicing quicker and cheaper. (OECD, 2015) Furthermore, the income tax system in Chile as a whole was revised in 2007 to streamline the calculation of tax for entrepreneurs. This was especially useful for micro and small enterprises to simplify the calculation of tax paid on profit. SMEs eligible for this revision were those with revenues of less than 3 000 UTM or less than 6 000 UTM in equity (ILO/FORLAC, 2014).

Within the larger Reform and Modernisation of the State Project, the Chilean government introduced Law No. 19.880 in 2003. The objective was to improve the focus of administrative procedures on individuals, to shorten the deadlines for responding to both citizens and enterprises, to simplify the public administrative procedures, and to

increase the transparency and performance of public institutions. This law sought to change the regulatory and administrative environment for both citizens and businesses alike.

The different measures described above demonstrate that since the early 2000, the Chilean government has taken several steps to improve the regulatory environment for SMEs. Despite this, some areas could benefit from further attention at the turn of the decade. Though the nature and acuteness of the different obstacles are likely to vary across different types of SMEs, a number of general barriers were identified for enterprises in Chile. In their article (2008) for the World Bank, Goldberg and Palladini identify four main areas: legal and regulatory barriers, networking barriers, access to training, and access to credit. The authors highlighted the lack of a unified, coherent SME strategy underlying its financial support instruments.

This lack of perceived consistency in SME related measures has been recognised to some extent by the government and instruments were set up to further coordinate the support efforts. Programmes such as *Emprende Chile* or the *New Productive Activities Programme*, designed to co-ordinate the efforts of relevant ministries with regard to SME policy. The project co-ordinates various ministerial activities by examining the needs, economic and employment circumstances in a region and identifies entrepreneurship mechanisms to link commercial networks and SMEs. Beyond such projects there was typically not much co-ordination and coherence across different SME-orientated policies.

Policy trends: 2010 - present

The main focus of this period was to implement policies that would make the business environment more attractive and reduce the regulatory burden for SMEs through legislative efforts. The Agenda for a Competitive Impulse was implemented for the period 2010 -2014 providing the framework for a series of regulations with a focus on simplifying start-up procedures for SMEs.

One landmark was Law No. 20.416 in 2010, known as the Small and Medium Enterprise Statute *(SME Statute or Estatuto PYME),* which establishes the need for small companies to be treated differently. The law forms the basis for the establishment of an enabling regulatory framework for the start up, growth and closure of small enterprises, based on the understanding that this segment of firms requires differential regulations and specialised institutions. The SME statute covers a wide range of general provisions, specific regulations and institutional arrangements, along with transitional provisions to improve small business competitiveness. Some of the policies described here formed part of this framework, while others were designed and implemented before or after the law.

In 2013, the *Banco Estado Microempresas* (the only commercial state-owned bank, established in 1995 to financially support micro and small enterprises) formally created the *Cuenta Emprendedor*. This account was established to help newly registered enterprises to manage their finances. Usually micro enterprises do not have access to bank accounts as they do not fulfil the requirements for opening one up. In not having a bank account, access to other support services is also prohibited and the *Cuenta Emprendedor* helps remedy these difficulties for recently established micro businesses.

The Chilean government also set up the programme *Tu Empresa en una Día,* or "Your Business in a Day" in 2014. This platform was created under Law No. 20.659 under the national competitiveness strategy and set out to streamline the start-up procedures for SMEs. Registration through this platform takes place online and is to be

completed in a day, reducing the complexity and regulatory burden of starting an enterprise. Registration is free though applicants pay for the electronic signatures from a notary and the collection of the necessary documents to submit as part of the application process. Once registered, the business is given a tax identification number and can start its operations. This same number is also used for paying social security contributions and for submitting other modifications concerning the enterprise. The Chilean government reports that after the first five months, this platform helped 10 025 firms to register. Even companies already established are entering the new system because it offers them the opportunity to make rapid changes at a lower cost, amongst other benefits. The programme would be of great benefit by addressing computer illiterate owners of informal enterprises.

In 2014, Law No. 20.720, the bankruptcy law in Chile, making it easier and less complex to declare bankruptcy. While previously closing a business was slow and costly, a deterrent to formalising businesses, this has since been simplified. Under specific thresholds regarding size and revenue, micro and smaller enterprises can close down more easily. The National Revenue Service estimated that prior to these revisions, some 15 000 enterprises were hampered in their development due to inadequate bankruptcy procedures. Additionally, the SME Statute also includes a procedure for insolvency.

Further measures are expected as part of the National Agenda for Productivity, Innovation and Growth, which contains a set of key priority areas and related actions to achieve economic growth and productivity. The agenda contains a specific section on supporting SMEs, with measures 18 to 24 highlighting concrete activities which are currently being developed and/or implemented to support SMEs. These key activities include:

- Capitalisation of the State Bank, *Banco Estado*: capitalising the State Bank so that the provision of credit to SMEs can be further expanded. In this way both enterprises and their households are supported without entrepreneurs having to make monetary choices which could diminish their participation on the market or other business activities. This measure has been implemented.
- Capitalisation of FOGAPE: by capitalising FOGAPE credit is made more easily available for small enterprises. Additionally, to improve the coverage of beneficiaries of FOGAPE, the upper limit for annual sales has been raised so that more enterprises remain eligible for financing via FOGAPE. This measure has also been implemented.
- Promoting an increase in female entrepreneurs: the State Bank implemented a programme to improve access to finance and services for female entrepreneurs, thus contributing to the strengthening, development and growth of their enterprises. Amongst others, the programme includes a general analysis of the credit applications made by participants, and on generating more and better communications with their clients. Furthermore, networking activities, information provision, training plans and mentoring are all facilitated under this programme through a virtual platform. This measure has also been implemented.
- Autonomous financing for female entrepreneurs: this measure aims at promoting better equality of men and women in the eyes of the law so that, in practice, access for women to financing is improved and their entrepreneurial prospects enhanced. This measure is still in its development phase.

- Creating an electronic system for guarantees and loan obligations:, the Chilean government has created an electronic system to strengthen the current system for approving guarantees. With this system people and enterprises can register and deliver their guarantees and loan payments to the appropriate financial institutions. In doing so they can easily track, recover and change their payments when portions of their debts have been paid with speed and ease. This measure is still in its development phase (see also Chapter 11).
- Supporting emerging financial products: this measure includes a renewed impulse towards developing financial products and services to support entrepreneurs. They include new methods of making payments by entrepreneurs, or for instance, collective financing initiatives (or crowdfunding). This measure has been partially implemented.
- Network for business development centres across the country: under this measure a network of business development support centres has been set up throughout the country to improve the effectiveness of entrepreneurs in achieving their business plans. Existing support centres were built and their activities expanded further so that entrepreneurs can gain information as well as support in getting financing, and mentors. The network is managed by the Technical Co-operation Service (*Servicio de Cooperación Técnica,* SERCOTEC*)*, which supports the centres. The centres and their services are delivered by specialised organisations such as universities or business unions. This measure is being gradually implemented.[6]

In the recent publication OECD *Financing SMEs and Entrepreneurs 2015: An OECD Scoreboard,* the implementation progress of the agenda is provided. For instance, regarding measure 18 of the Agenda on capitalising the State Bank, a capital increase of USD 450 million was approved in order to increase financing opportunities for small businesses and entrepreneurs. In addition to the capitalisation, *Banco Estado* implemented a programme aimed at women (*Banca Mujer Emprendedora*) that will ease financing conditions for entrepreneurial women. This connects with measure 20 on the Agenda, relating to a focus on female entrepreneurs and to promote their activities.

In relation to measure 19, on capitalising FOGAPE, this translated into an increase of USD 50 million in capital for FOGAPE in order to increase financing opportunities for SMEs. At the same time, the eligibility requirements for this fund have been modified. Specifically, the maximum annual sales threshold was increased in order to give more businesses access to the guarantees offered by the programme.

Furthermore, an agenda for changes to existing regulation related to financial instruments will be proposed in order to allow for new alternative instruments of financing for SMEs and entrepreneurs (e.g. crowdfunding, asset-based financing, etc.); this relates to Measure 23. Additionally, a programme to implement an electronic collateral registry in order to enhance the use of various kinds of movable assets as collateral to secure SME loan obligations is foreseen. This initiative is expected to increase the mobility and divisibility of collateral with an expectation to boost financing for SMEs and entrepreneurs. This in turn is connected to measure 22 on establishing electronic systems of guarantees.

Finally, regarding measure 24 and the Business Development Centres, these are being gradually implemented by SERCOTEC. As of 2015, there are 50 Business Development Centres for SMEs and entrepreneurship where citizens will have the opportunity to get

advice on a wide array of topics including financing and government support programmes.

Additionally, previous OECD research indicates that the following measures will be implemented by CORFO under the agenda: an increase in resources for early-stage start-ups by creating new funds of seed capital, strengthening of the Start-up Chile Programme that offers equity-free financing to start-ups; creation of a business innovation programme aimed at improving management practices of SMEs; creation of a programme of technological diffusion focused on helping groups of associated SMEs to bring technological advances to the country that improve their competitiveness (OECD, 2015). Furthermore, an Advisory Commission on Financial Inclusion is to be set up that will support the Executive on the design of an agenda for financial inclusion and education to guide policy making.

From the paragraphs above it is evident that there has been an increased policy focus on Chilean entrepreneurs. Focus on improving access to finance for entrepreneurs is being sought, easing the regulatory and administrative framework surrounding financing and payments by entrepreneurs have been the main areas of attention, and, to a lesser extent, facilitating the activities of female entrepreneurs and general training and support systems for entrepreneurs.

Barriers to entrepreneurship in Chile

Notwithstanding the efforts and some success stories, there is room in Chile for a harmonised approach to SME policy. A myriad of initiatives and instruments are in place or are being developed to promote entrepreneurship. However, anecdotal evidence from Chilean entrepreneurs, as well as broader research analysis carried out for this chapter, indicates that a perception of a fragmented approach to SME policy still remains.

Besides this, priorities are set in developing new policies rather than following up on existing ones. Chile would benefit from this approach, more so if these are monitored, evaluated and adjusted as necessary to correspond to the actual needs of entrepreneurs and SMEs. This became evident from broad anecdotal evidence from entrepreneurs who indicated that there was no coherent overview of the various regulations and support relevant to micro, small and medium enterprises. Stakeholder feedback also indicates that at sub-national level and in terms of inspections, SME policy is implemented in a different manner. It appears therefore, that different interpretations and implementations of laws and regulations at municipal level also contribute to an inconsistent approach to SME policy.

Finally, specific legal domains were flagged as causes of excessive compliance cost and complexity for SMEs. Broadly speaking, understanding and complying with tax regulations have typically been a concern for SMEs in Chile. Additionally, health and safety regulations for instance for SMEs with employees or for SMEs working in hospitality sectors constitute areas of higher compliance costs. For many SMEs, finding explanations, advice or overview on regulation is difficult and burdensome.

This section examines the main regulatory barriers found in the SME landscape. The information provided in this section is mainly based on interviews and discussions held with a variety of experts, as well as anecdotal evidence collected amongst SME representatives from the National Council on Small-Sized Enterprises (*Consejo Nacional Consultivo de la Empresa de Menor Tamaño)*.

Fragmented approach to SME policy

Preceding chapters in this report discussed the fragmented approach to policy. In the context of SME's, the situation is no exception. Laws and regulations are made by various ministries and other institutions (government, Parliament, agencies, regions, municipalities). This hampers co-ordination, insight in impacts, overview and understanding of laws and regulations by SMEs.

SMEs mentioned the following with regards with the matter at hand:

- Government organisations do not often use each other's expertise, nor do they have a structured approach to consultation of other stakeholders. While there are some good experiences to be found in policy-making consultations for other sectors, this is somewhat lacking where SME policy is concerned.
- There is no consolidated repository of regulations, in which the different norms are explained, as well as their reason for existing, their implementation and the relationship they have with the business sector.
- At the municipal level there is a lack of coherence and standardised requisites depending on the municipality one approaches. Depending on the characteristics of a municipality and its environment, certain policies and regulations may receive more attention than others based on the more pressing needs in a region. More efforts may be put into implementing certain regulations compared to others depending on the municipality. This can lead to incoherent approaches which can be burdensome for entrepreneurs throughout the country.
- There is no coherence in the way the auditing bodies act. In relation to the point above regarding different implementation of policies and regulations at municipal level, this diversity in behaviour also extends to auditing bodies. These bodies check and assess compliance with regulatory rules in different ways which, again, can lead to an inconsistent impression of SME policy and regulations.

However, some recent positive examples can be mentioned. Already discussed above are the working councils and public consultations. Another example is the cooperation between INAPI and INDAP, where INDAP developed courses for SME´s in the field of agricultural trademarks and geographical indications.

Regulations and size differentiation of enterprises

Many stakeholders refer to the lack of differentiation in regulations between large enterprises and SMEs. The differences in their firm characteristics are not always taken into consideration which lacks a number of challenges for SMEs. The various administrative requirements, (i.e. permits, licensing, taxation, accounting, administrative requirements), require a good deal of human resources, time and money to understand and implement properly. Large companies can do so at lower relative costs as they have more resources available for doing so. SMEs on the other hand often struggle with compliance. The lack of differentiation between company types in regulations contributes to an uneven playing field for SMEs.

In this context, the most common example mentioned concerns sanitation requirements and hygiene standards. They are basically the same for all enterprises. However, for SMEs the administrative complexity is higher and compliance is more difficult. Especially for small firms, relative costs (per employee or UF) are much higher.

This example illustrates the difficult balance one has to strike between taking into account SME's characteristics while maintaining a generic political goal (for instance, safety of work places and food hygiene). Some measures have been taken to remedy this, such as the Zero Formality programme (*Trámite Cero)*, where the authoritites grant the permits in one hour to enterprises under the signed promise that they will meet requirements and further inspection.

Similarly, larger enterprises are able to handle delays and lengthy payment procedures better than SMEs as they tend to have strong revenue and liquidity positions. A delay of more than 30 days for an SME can lead to more severe liquidity issues than for a larger enterprise. One example mentioned is the Timely Payment Code (*Código de Pago Oportuno a mis Proveedores*) signed between the SMEs, the representatives of the big enterprises and government. This should reduce the time from anywhere between 60 to 180 days to a time limit which SMEs could also manage (30 days).

In this spirit the *Sello Pro Pyme* was established within the Ministry of Economy, Development and Tourism. When large enterprises and suppliers deliver to SMEs within 30 days they receive a seal; companies with this seal are published on the initiative's website (www.sellopropyme.cl), to help SMEs access suppliers who make more timely and manageable deliveries and payments. However, additional efforts are required as according to SME representatives, the 30 days payment is not necessarily being implemented and is not yet a widespread practice.

Some recent good practices in the field of labour can be mentioned:

- There is an obligation to have a book of wages that only companies with more than 5 employees are required to keep
- Regulations with respect to the employment of foreigners only applies to companies with more than 25 workers
- Internal Health and Safety Regulations are for companies with more than 10 workers (apart from general safety rules).

Two other examples illustrate the potential problems attached to differentiation.

- Sanctions punishing micro, small, medium and large companies (by number of employees): the amount of fines varies depending on the size of the company. Large enterprises consider this unfair competition. Moreover, such a differentiation may result in a safe workplace not being provided.
- A A nursery is only obligatory for companies with 20 or more women. However positive the intentions, it may discourage employers from employing women.

Ex ante *and* ex post e*valuation*

Also discussed before is the need to systematically evaluate policies and regulations, both prior to implementation (*ex ante* regulatory impact assessment) and *ex post* (effects, possible improvements). Of specific interest in the SME context is the preparatory analysis supporting draft regulations, which includes an estimation of the regulatory impact on SMEs in a special form that has been prepared for the whole administration. This obligation is set out in Law No. 20.416. In theory, it is a very useful instrument, but implementation falters according to many stakeholders, as discussed in detail in chapter 4. Monitoring and evaluating the performance of regulations is a generally advisable practice as it allows for a regulation to be adjusted according to the changing environment

and needs of the target group in question. In the case of SME policy this is no less the case; the changing national context in Chile and the changing needs of entrepreneurs, also based on favourable impacts of SME policy, are important to track so as to create policy in an effective and efficient manner.

Even though SME associations recognise the work done by the government regarding the ease of regulatory barriers, there is still much room for improvement. Official reports and international analyses (World Bank Group, 2014) vouch for the positive steps being made by the Chilean government to create a more attractive climate for SMEs, but these are somewhat at odds with the perceptions of SMEs collected from anecdotal evidence amongst Chilean entrepreneurs. This can partially be attributed to differences in implementing these new regulations but also in their design. The design of many laws and regulations does not appear to consider the special case of SMEs compared to larger enterprises and this leads to higher regulatory barriers throughout the life span of an SME. *Ex ante* evaluations in combination with differentiated regulations could bring substantial improvements.

Legislation vs. implementation

Previous chapters of this report indicate that, at the central political level, typically there tends to be more attention given to laws as opposed to implementing regulations. Laws are made but their implementation at sub-national levels often receive less attention from public institutions and this leads to inconsistent implementation of a given law or regulation. Several funds and policy supports for SMEs are organised at national level (ILO/FORLAC, 2014). For instance, CORFO is launching an initiative to increase the resources and the implementation of SME support programmes. This is to be based on a higher level of decision-making by the regional authorities in order to decentralise the policymaking of SME support programmes. The state of affairs of this initiative is not clear, nor how CORFO will implement a co-ordinating body to monitor the implementation of SME programmes by these regional authorities.

In a similar vein, the full range of SME policies and support is unclear for SME's and their representatives. In connection with the comparatively few regulatory monitoring mechanisms in place, this may, to some extent, explain the persistent presence of non-formalised micro and small enterprises.

The survey amongst SME representatives produced a number of specific complaints and examples of implementation issues:

- In general, laws tend to create legal voids that allow for interpretation.
- It is easier to audit and sanction a SME than a big enterprise. Though the level and nature of the fines differ according to enterprise size, SMEs have less clout than larger enterprises to deal with the administrative and financial processes involved in receiving auditors and sanctions.
- Depending on the regions or communes (municipalities), regulations change and/or are applied differently.
- The National Training Service and Employment (SENCE) does not possess an adequate supply for the sector. The state proposes social assistance rather than skills improvement training.
- Individual (health) inspectors take a very different stance towards SME's, varying between understanding and helpful on the one hand, and punitive on the other.

- Constant modifications to the SME Support and Promotion Programme. We have to start all over again trying to understand how the programme works now. After we come to grips with the programme it is changed again and we have to start the programme again.
- A study by the University of Chile resulted in different responses by the health supervisory bodies to questions concerning actual implementation.
- Municipalities have different interpretations of operating permits (*patente comercial*). For example, in some municipalities a design consultancy has to apply for a permit, in others not.
- Noise emission is classified differently by each municipality.
- All municipalities apply the Law on Family Business differently.

Differences between municipalities were mentioned in all responses and during many expert interviews. Municipalities are responsible for providing the operating permit enterprises require. The underlying regulations vary by municipality as the central norm is included in a delegated act. For small family businesses, simplified rules have been developed. Furthermore, requirements depend on enterprise characteristics, notably the possibility of environmental impacts (in a broad sense, including e.g. noise). The operating permit is only required if the enterprise is 'physically present'; in principle, independent workers do not require a permit.

Law No. 18.695 states that municipalities should contribute to economic development, but does not give specifications or criteria on how to fulfil this mandate. Municipalities do not receive sufficient guidance or information on issues such as these. The existing associations of municipalities are considered too political to make a difference. Although SUBDERE (*Subsecretaría de Desarrollo Regional y Administrativo*), the agency focusing on co-ordination on regional and municipal levels, is increasing its efforts, but it lacks the resources to make any real difference. One should also consider the huge differences between municipalities in urban and rural areas.

Information dissemination and communication

Chile could benefit from a consolidated and fully developed system providing information on legislation, obligations, etc. Stakeholder contributions suggest increasing the coherence of the information available on policies and instruments and some advocate the establishment of one-stop shops. SME associations and interest groups are scattered and fragmented, each focusing on their own members. This translates into having a fluctuating level of support and information received by entrepreneurs.

A co-ordinated information system would reduce the levels of accidental non-compliance amongst SMEs and reduce the perceived administrative complexity, which still acts as one of the major obstacles to starting an enterprise in Chile, according to stakeholders. Having all relevant information for entrepreneurs in one place, written and framed in plain language, could contribute to reducing perceived administrative complexity. Often establishing which regulations are relevant to an entrepreneur's situation, as well as then complying with these requirements can result in accidental non-compliance due to failure to understand. Clarifying and harmonising information could therefore help. As has also been mentioned, it is crucial that the system is complete (at least at legal domain level) and kept up to date. As discussed, both physical and internet one-stop-shops are currently being developed.

Although the CORFO does emphasise better support activities, the degree to which these actually reach entrepreneurs leaves room for improvement. Though CORFO puts efforts into improving its communication and information dissemination activities, these could be increased even further. Municipalities can play a key role, as these are at the implementation level and support activities currently provided by municipalities towards SMEs are reported to be inconsistent across regions. Umbrella organisations of SME associations could also play an important role. Currently, in tandem with CORFO's activities, SERCOTEC, under the Agenda for Productivity, Innovation and Growth is gradually implementing a network of business desks across the country to act as information, advice and support points for SMEs. Such initiatives are positive steps in bringing information to entrepreneurs.

Various SME representatives stress the need to train entrepreneurs. Lack of skills can be a cause of non-compliance, higher compliance costs and higher costs of legislation enforcement. A good example can be found in the field of medical insurance. The insurance companies invest quite heavily in training and risk prevention. Obviously, being (semi) commercial implies that this works out to their benefit as well. They use training, support units and a specific checklist for SME's – specifically related to risk assessment.

Complexity

Administration and accounting involved in setting it up is perceived as complicated. Even though digitisation is taking hold and there is a rise in digital government services to set up businesses, the administrative and financial complexity remains to a large degree. Although documents can be easily scanned or sent online to relevant authorities, procuring those documents is still a time consuming and expensive process according to stakeholders. Documents here can include permits and licenses, which involve notaries or accountants or tax advisors; according to stakeholders the aspect of procuring these documents remains complex and therefore continues to form a barrier to entrepreneurs. In close connection with this point is the fact that these efforts to ease the administrative burden through digitisation of services require access to such digital services. Not every SME has internet access and therefore administrative complexity and burdensome administrative procedures for setting up an enterprise remain challenges to those SMEs without digital access.

Other burdensome issues mentioned in response to the survey:

- The most complex factor is accounting; in the fiscal system, it is quite complex to know which laws are specific for each sector and what benefits they could bring.
- Requesting a working permit often is a lengthy process. One needs to do it in person.
- Heritage law and its effect on business.
- Sanitary measures and quality standards.
- Dissolution of the business.

Compliance cost

Acquiring administrative documents such as permits and licenses, accounting procedures and requirements and taxation considerations all entail high costs in terms of

human resources, time and money according to stakeholders. Added to this is the waiting time involved when other parties and institutions are involved; these delays can have relatively larger impacts on a SMEs performance compared to larger enterprise.

Very specific regulations causing regulatory problems for SMEs were mentioned in the response to the survey. Often, the problems seem rather specifically related to the type of SMEs represented. While national level data collected by the Ministry of Economy, Development and Tourism is available on the main barriers to growth as well as to formalisation of enterprises, these statistics remain relatively broad. The points below provide some further insight concerning the main, specific compliance costs according to entrepreneurs.

Direct cost (payments/fees to government/agencies)

- payment for Certificates of Origin in cases of exports
- excessive payments to notaries
- in the case of the OTEC (capacity building organisations, generally SMEs) the certification NCH2728
- registration cost for intellectual property in the National Institute of Intellectual Property (INAPI)
- costs of obtaining a website domain
- administrative fees for application forms, for example in the private health insurance sector, ISAPRES.

Other compliance costs (costs for enterprises to comply with legislation, not being direct cost, but for example wages of employees filling in forms, investments in machinery, payments to advisors/accountants, etc.):

- Obligations in the context of sanitary and environmental regulations.
- Complexity and duration of the process to register intellectual property.
- Accounting and tax advice.
- Labour inspection audits.
- Public procurement. Barriers have been decreasing for SMEs but the required guarantees still are an obstacle for participation. The *ChileCompra* platform works well but access remains poor.

There is a common understanding among SMEs that inspections seem to target SMEs more and this reduces the desire for SMEs to become formally registered. Additionally, sanctions are given more easily to SMEs who are less able than large enterprises that have the resources to legally cover themselves better, to fight sanctions or to make necessary changes to their organisations when authorities deem this necessary. SMEs are comparatively more vulnerable to inspectors in this regard.

Non-compliance is unintentional in the case of SMEs according to stakeholders, and it stems from lack of awareness regarding which regulations are relevant to their type of business. Availability of information and advice, administrative complexity and the relatively higher costs associated with understanding regulations for SMEs increase this problem. More support activities through a more collaborative interaction between institutions and SMEs could reduce the risks of non-compliance.

In cases of a first instance of non-compliance an SME could be helped to understand and remedy their error as opposed to being fined. Such a change in approach is evident in some aspects of SME-related policy, but could be used in other regulatory areas; revisions in labour laws for instance include an advisory and supportive component in cases of non-compliance. Instead of fining an SME first off, they are helped to correct their breach in compliance with the relevant labour laws. Extending such a supportive and collaborative approach regarding breaches in complying would also help to reduce the perceived administrative complexity in that entrepreneurs are helped to understand the range of requirements they must fulfil and the reduced risk of sanctions may help formalise SMEs in Chile.

Assessment and recommendations

Based on preceding sections, the following paragraphs present the overarching analysis and several main recommendations to improve the regulatory business environment for Chilean SMEs. Several interesting practices in other countries are included as an illustration. As discussed above, the recommendations will comprise the regulatory environment as a whole and a special focus on SME specific aspects.

The government of Chile should support SME's development by formalising stakeholders' involvement throughout the regulatory process with the aim of having interventions that are more suitable to their needs. The consultation process could largely benefit from clear, standard and compulsory guidelines regarding SMEs, even at the sub-national level.

Policy makers should be aware of the wide range of necessities, size, skills and nature of SMEs during all the phases of the policy cycle. A special focus should be granted to the representation of SMEs and stakeholder engagement in the policy and rule-making process, as well as in the nature and rationale of their participation within public consultation.

The SME Statute is a powerful tool that already indicates that the need to treat SMEs different is acknowledged and to involve them in the rule-making process. However, in practice, the SME Statute is carried out in a procedural manner rather than as a cost-effective mechanism for information. The SME Statute is seldom conducted before the draft regulation is prepared and it runs the risk of becoming a justification of the regulatory proposal.

Support at the highest political level will play a key role in implementing a dynamic and constant communication channel with SMEs. Within CORFO and the Ministry of Economy, Development and Tourism the involvement of SME related stakeholders happens through advisory boards; however, a broader consultation mechanism that takes into account opinions in the early stage of the rule-making process should be implemented in order to increase coherence and ownership of SME policy.

Taking the SME representatives seriously, even if they have limited power, will help the associations in turn to grow and become an increasingly reliable partner. Advertising the results of SME consultation is useful for both sides of the table, particularly if the

outcome has an added value for SMEs, allowing associations to become a real and clear communication channel between the public sector and SMEs.

The diversity of SMEs is reflected in their institutional context. SMEs are represented by a large number of mostly small and sector-oriented associations. This has a negative impact on the strength of the representativeness of SMEs, as well as on the efficiency and effectiveness of political processes regarding the regulatory environment for SMEs.

An observation made throughout this report is that rolling out successful national policies and organisational procedures to the local and regional levels can prove difficult and lead to fluctuating outcomes. The government of Chile should also formalise the involvement of stakeholders at the sub-national level into the policy making process as stated in Chapter 4 recommendations.

Focusing and targeting resources on the quality of doing business is just as important as the creation of new enterprises. Increasing capacities of targeted groups or sectors such as women and youth should be the focus for SME policy in Chile.

In the wake of the financial and economic crisis and the difficult access to finance for entrepreneurs, especially young entrepreneurs, this group could form a target group for more tailored policies. Female entrepreneurs already form a focus of SME policy under the Agenda for Productivity, Innovation and Growth but could still benefit from further support. Specialising financial support programmes or administrative burden alleviation for specific sectors (for instance, agriculture or food-processing sectors, where stakeholders indicate there are large quantities of hygiene requirements and inspections) could be designed as well. Such sectors could benefit from a more efficient manner of communicating and complying with relevant regulations.

International examples for stimulating entrepreneurship amongst the young are a growing trend across Europe; common approaches to stimulate entrepreneurship among young people include practical training and business support services, tailored to the specific challenges faced by these people. For example, in Lithuania, the "First business year baskets for youth" was implemented to target youth unemployment (up to 30% in 2012, one of the highest in Europe), through entrepreneurship. This measure was implemented by a non-profit agency under the Ministry of Economy, *Versli Lietuva* (Enterprise Lithuania), and involved handing out vouchers for business support services to people under the age of 29 who attend entrepreneurship promotion events by *Versli Lietuva*. Each person receives one voucher and can exchange this in for business support services up to LTL 6 000 (approximately EUR 1 740).

Young people receive information on things like bookkeeping and accounting, labour law and occupational safety, contracting, licenses and permits. Between May 2011 and July 2013, some 5000 vouchers were handed out and around one third of these were used to start an enterprise. *Versli Lietuva* indicated that 98.9% of the businesses survived for at least one year, compared to a national average of 63.3% (OECD & European Comission, 2014). Such measures which begin by communicating with and involving young people, combined with an incentive for free help and consultations can lower the barrier to entrepreneurship; it also allows young people to select the services they wish to follow.

Establish mechanisms to actively provide oversight to SME policy with the aim of improving coherence and co-ordination within the existing agencies and programmes at all levels of government.

While a certain degree of diversity in implementation of programmes is normal, entrepreneurs should have access to a similar basic level of opportunities and programmes. One of the recurring issues encountered regarding regulatory burden for Chilean entrepreneurs is that policy instruments designed to help SMEs are not implemented in a uniform manner at the sub-national level. For a country as large as Chile with areas of diverse levels of urbanisation and development, a uniform implementation of policies should be sought.

In this spirit, the Ministry of Economy, Development and Tourism as main responsible of the SMEs portfolio, could strengthen co-ordination in the implementation of programmes at the national and sub-national level, acting as an intermediary between the national and local political levels. By working with and supporting municipalities in the implementation of policies, a central public body could contribute to a more standardized and effective implementation of policies and programmes.

Improved co-ordination and communication at the national policy-making level in Chile could be very beneficial for a more coherent and streamlined SME policy portfolio. This could be achieved through systematic, regular meetings between branches of national ministries and agencies at work in similar or overlapping sectors. At the EU level for instance, consultations and workshops between relevant sectors are quite common. In certain European countries there is also a more prevalent consensus based approach to policy making (such as Sweden and the Netherlands), which includes multiple stakeholders coming together to discuss challenges for a given sector and appropriate policy responses.

Engage in an administrative simplification programme specifically for SMEs, with a focus on the most burdensome regulations. Take advantage of existing initiatives to assess their costs and support their simplification and streamlining.

Reviewing and simplifying administrative procedures would increase the ease of doing business in Chile. The opportunity should be taken to measure burdensome regulations and simplify them jointly with digital government initiatives such as the Business Desk. Efforts should be made to simplify procedures before they are digitised. Furthermore, as was the case in many other countries, administrative simplification might be used as a spring board for creating more sophisticated, whole-of-government regulatory policy. Given that the results of simplification programmes are relatively easy to measure and to present to politicians, high-level decision-makers as well as businesses and general public, these programmes as be used as a stepping stone to more comprehensive regulatory reforms.

An internationally applicable initiative for improving the regulatory environment for SMEs means measuring burdensome regulations with the Standard Cost Model (SCM). This instrument is a tool for identifying and reducing the administrative burden and has been applied throughout OECD countries. The SCM involves relatively straightforward methods for identifying and quantifying the costs and time involved in administrative and

regulatory requirements. These insights into the costs and time involved are provided for both the aggregate and regulation-specific levels. This tool is therefore useful for generating insights which act as input for targeted policy interventions, as well as helping to monitor the effects of policies and reforms. The tool can be applied and adapted to different national contexts and regulatory environments. The broad applicability is demonstrated in its use in OECD countries

Formalising existing informal SMEs and limiting the creation of new informal enterprises deserves a high political priority.

A crucial element is to make it both beneficial for the informal and the formal enterprises and ensure it is perceived as such. A gradual improvement without too much use of force is the best approach. Some of the main barriers which prevent formalisation include taxation, business registration/licensing requirements, and compliance with labour laws. For example, reducing the perceived cost of business registration by lowering the time and total cost of registering, or decreasing taxes on new, small enterprises that are being formalised for the first time. Evidence shows that reducing tax rates and simplifying the paperwork and tax compliance helps increase the rate of formalisation. Some general approaches to improving the formalisation of businesses include:

- Increasing the benefits of formalisation such as by improving access of micro enterprises to formal loans or by subsidising the hiring process within small new ventures.
- Removing perverse incentives where possible. A common example of this mechanism is: situations in which informal enterprises do not formalise because they would lose their status of vulnerability granted by the State.
- Differentiate between what we call informal enterprises. Some are deliberately evading compliance with the regulations, and others are simply not in a position to comply. Policy measures and monitoring compliance should take into account the effort made by the formal sector to comply with regulations – competition advantage based on non-compliance is not desirable.
- Promotion of the benefits of business registration is a crucial aspect in the formalisation process. This related to the preceding point that reaching informal entrepreneurs often forms one of the main stumbling blocks towards awareness of SME-friendly policies and the benefits of registering (Innovation Policy Platform, 2013).

The government of Chile should communicate results and consistently promote the benefits of having a more dynamic SME landscape, including the benefits of formalising enterprises.

The government of Chile could benefit from the implementation of* ex post *evaluation of SME regulation to ensure that performance and impact are reviewed regularly and objectives met.

As stated in the *ex post* chapter, Chile has been a pioneer in the *ex post* evaluation of laws, but additional steps should be undertaken to ensure that other regulations, in

particular secondary regulations, are also part of this systematic work and that the whole legal system benefits from this process. The aim is to ensure that policy achieves its objectives.

Laws and regulations should be periodically reviewed and carried out in co-operation with the executive and the legislative authorities, taking into account that most information on the implementation side lies in the regulatory bodies of the executive branch. Stakeholders should also be involved as they can provide information on ways to move forward.

An added step in this direction could be to follow the Swedish approach to evaluating its SME policy. For several years, the Swedish government has used a checklist of 12 questions to establish how policies are performing, as well as to identify areas for improvement, based on the specific needs of entrepreneurs. The process therefore involves actively researching and surveying entrepreneurs in different municipalities to establish where the main administrative challenges and burdens lie. As municipalities differ in their environmental features and the main challenges to entrepreneurs differ accordingly, having a more precise idea of which aspects of the regulatory environment to work on could further help to promote formal enterprises (European Commission, 2007).

A key recommendation to any policy is to have a system for monitoring and evaluating the performance of a policy, and this is no less true for the SME policy. In order to establish the effects of the diverse set of instruments and policies at work in Chile, a system for assessing these policies should be established and implemented for the various instruments developed. Besides helping to monitor progress being made, evaluating policies can also help to identify areas of overlap in the functions of different policy instruments.

Adopt a risk-based approach to enforcement and inspection strategies rather than sanctions. Enforcement and inspections need to be risk-based and in proportion to the level of risk they pose.

The major challenge for governments is to develop and apply enforcement strategies that deliver the best possible outcomes by achieving the highest possible levels of compliance, while keeping regulatory costs and administrative burdens as low as possible. SMEs are those for whom the experience can be the hardest, and the burden the heaviest, as they have less resources to deal with regulations, compliance issues, etc (OECD, 2014a).

An example from the United Kingdom is that local inspections are conducted amongst SMEs which follow a risk-based, sectoral approach (European Commission, 2013). At council level in the UK, an assessment is made of SMEs which warrant stricter or less strict inspections with risk, labour and health laws depending on how risky the sector of operations is. This risk-based approach allows some SMEs to follow less strict requirements where the councils deem these less relevant to an enterprise. In this way compliance costs for certain enterprises are reduced. In Chile enterprises in sectors which are subject to greater hygiene, health and safety legislation could be approached in a similar manner. As it stands, under the SME Statute and initiatives such as Trámite Cero, regulations not related to health, safety and hygiene areas are being made easier and quicker to implement for entrepreneurs. However, assessing these initiatives and the

process by which the inspections conducted in connection with these initiatives is not clear.

Consolidate and implement the initiative* Escritorio Empresa*, taking into account the wide array of policies and regulations regarding SMEs, including those at the sub-national level. Further efforts must take into account the large number of entrepreneurs who currently do not make use of the internet. Furthermore, information provided will require a mechanism that allows for systematic updating.

The Business Desk (measure 35 of the Agenda for Productivity, Innovation and Growth) will allow for a more coherent and systematic manner of providing information to entrepreneurs in one point. Currently, the one-stop shop for enterprise registration does not include the operating permit. The forthcoming evaluation of the *Tu Empresa en un Día* (Your Business in a Day) programme should take this element into account: and combine both. For both registrations, keeping the information up-to-date and ensuring the reliability of information provided by the start-ups is of utmost importance. Link the enterprise ID-number to other services, expand the possibilities of temporary permits to facilitate a quick start, such as an automatic digital patent application going to the relevant municipality as part of the registration. This would require supporting municipalities.

Providing information on the many policies and instruments available to SMEs in a country as large as Chile requires a well-developed communication strategy. Reaching entrepreneurs, especially in rural areas warrants close attention. Given that during the last EME survey, some 63.7% of entrepreneurs in the sample indicated they did not use internet in their business activities, a combination of communication channels is required. Indeed digital government policies undertaken to ease administrative burden in Chile are a positive step (see Chapter 11), but one which may fail to reach a large number of entrepreneurs.

Bearing in mind the computer-illiterate population, communication should not only be improved by means of digital solutions. Physical presence at local level is currently limited. This hampers formalisation and compliance. Both INDAP and several municipalities are already active in this field; such initiatives should be incorporated. There are several one-stop shop solutions being used, both physically and using government digital solutions. Rather than creating new ones, the existing initiatives could be combined to facilitate interface with the population. Having efficient and effective administrative procedures in place has little impact if people are not aware of this increased ease in setting up a formal business.

Annex 10.A1

Responses from SME survey representatives

In the context of the OECD Regulatory Reform review of Chile, the Chilean government requested a chapter focused on SME's. This entails analysing regulatory policies for Chilean enterprises and establishing recommendations about the criteria and procedures that help improve the design and evaluation of regulations that affect SMEs. The chapter should refer to governance, stakeholder participation, regulatory coherence, regulatory impact analysis, mechanisms of control/inspection and compliance, and ex post evaluation, and best practices for the implementation of a regulatory policy for business in general and, particularly, SMEs.

OECD representatives provided a presentation during the meeting on Tuesday 12 May 2015 in Santiago of the *Consejo Nacional Consultivo de la Empresa de Menor Tamaño*. While in Chile, they had many discussions with a wide variety of government organisations and agencies, scientists and other experts. In addition, a large number of relevant publications were studied.

Your support is requested to further improve the quality of the report. We kindly ask you to answer the questions below. The results will be included in a chapter of the OECD report. If you so wish, your contribution will be kept anonymous.

Questions

Representation of SME's

1. Please provide a brief description of the SME's you represent, or alternatively the relevance of your organisation for SME's
2. What is your opinion of the current representation of SME's, in terms of power, participation and consultation?
3. Can you provide a specific example of SME groups moving the government to make policy adjustments or amendments to legislative proposals?
4. What can be improved in this context, and how should this in your view be done?

Regulatory environment for SME's

Below, you will find questions with regards to the regulatory environment for SME's. If relevant, please feel free to distinguish various types of SME's (e.g. size, urban/rural, sector, formal/informal, family/other …).

5. What are the main problems for SME's in the context of legislation? It helps us if you can be specific (laws, regulations, etc.) and explain why this is the case. From

the viewpoint of enterprises and/or business processes. If possible, please provide (different) answers for:

- Direct cost (=payments to government/agencies)
- Other compliance cost (cost for enterprises to comply with legislation, not being direct cost, but for example wages of employees filling in forms, investments in machinery, payments to advisors/accountants, etc.)
- Complexity (here: obligations set in legislation that are difficult to understand for SME's)
- Coherence (are different regulations aligned to prevent unnecessary cost and not contradictive)
- Implementation (the practical translation of general rules, usually done by government agencies or regional/municipal governments)
- Enforcement/inspections

6. If possible, please provide concrete examples (6.1 – 6.6) of these problems. Areas we are particularly interested in are labour, sanitary, and business registration, but other examples are also welcome.
7. For each problem (7.1-7.6): how could this problem be solved or reduced, and who should undertake such actions?
8. Could you reflect on the most relevant recent and/or forthcoming developments in legislation where SME's are concerned?

Formalisation of informal enterprises

9. In your view, how does the informal economy impact SME's?
10. How could an increased formalisation of enterprises be reached? What would be necessary conditions?

Notes

1. Ministerio de Economía (2014), "Fomento y Turismo, Informe de Resultados Tercera Encuesta de Microemprendimiento 2013".
2. For the survey, participants of the *Consejo Nacional Consultivo de la Empresa de Menor Tamaño* were approached. Response to the survey: PROPYME (public private initiative which aims at fostering entrepreneurship), CRPC (represents SMEs and associations in a public-private sector setting), ASEXMA (represents SMEs in the manufacturing sector), CONTRAMEN (Confederation of Collective Taxis and Minor Transport of Chile, umbrella organisation), CNDC (national confederation of business owners in Chile, umbrella organisation), UNAPYMPE-EMT (umbrella organisation 7 national organisations of diverse productive sectors).
3. Insights from the Survey *Consejo Nacional Consultivo de la Empresa de Menor Tamaño*, conducted as part of this OECD study.
4. More of the Small and Medium-Sized Enterprises, www.oecd.org/globalrelations/smallandmedium-sizedenterprisessmepolicyindex.htm.
5. Biblioteca del Congreso Nacional de Chile, (2001), Historia de la Ley Nº 19.749 Establece normas para facilitar la creación de microempresas familiars, Chile.
6. Ministerio de Economía, Fomento y Turismo, Agenda de Productividad, Innovacion, y Crecimiento – Medidas, www.agendaproductividad.cl/estado-de-avance-por-medida/.

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Chapter 11

Digital government and administrative simplification in Chile

This chapter describes the current digital government and administrative simplification initiatives being implemented by the government of Chile. It reviews these practices against the framework set by the 2014 OECD Recommendation of the Council on Digital Government Strategies. It focuses on initiatives such as Chile Atiende, Empresa en un día, Escritorio Empresa*, and SICEX. Furthermore, it discusses the case of the Chilean ports as the Agenda for Productivity, Innovation and Growth considers logistics one of the main priorities of the country. In addition, it discusses instruments to align different agendas and foster policy coherence, effective collaboration and co-ordination. Finally, it recommends several actions in order to improve the alignment of actions aimed at improving digital government, administrative simplification and service delivery to increase impact.*

The *OECD Recommendation of the Council on Digital Government Strategies*, adopted in July 2014, calls for a change in the use of technology: from being a tool to improve internal operations and efficiencies, to becoming also a critical resource to foster innovative, participatory and open governments. This important change entails placing technologies at the core of reforms, as an integrated component of the entire policy-making cycle.

Chile has been investing for several decades in the use of technology to modernise its public sector, achieve efficiencies and foster simplicity within the administration, as well as to improve service delivery to its citizens and businesses. *Chilecompra*, *Chile Atiende*, the SICEX, Business Desk (*Escritorio Empresa*), Chile without Red Tape (*Chile sin Papeleo*) are all great examples showing the efforts made to leverage technology use in order to simplify the interaction between service users and the state. Nevertheless, the penetration and use of digital technologies has remained very limited in some areas where their uptake would deliver significant benefits, both for the users of services, as well as for the public administration. This includes, for instance, the Chilean construction permit regime that still largely relies on paper-based procedures as highlighted in Chapter 9 of this review.

The multi-channel delivery of public services, aimed at improving service quality and simplifying access, is a key strategic component of digital government, which is in turn a key strategic element to enable administrative simplification and overall state modernisation. As also highlighted in Chapter 5 of this review, there is no single administrative simplification strategy in Chile for the central administration. SEGPRES, through the State Modernisation and E-Government Unit (*Unidad de Modernización y Gobierno Digital,UMyGD*), responsible for digital government, has taken the lead in introducing a number of public digitisation initiatives also intended to contribute to simplify the administration, reduce the burdens for citizens and businesses and improve the delivery of services.

Through *Chile Atiende*, for example, the Government has tried to enable both a multiservice and multichannel approach to the delivery of public services, which aims at responding to users' needs and behaviours, in order to design experiences that meet these needs regardless of the channel used to interact with the state. The users should be able to switch from one service channel to another without facing any friction, they should be able to begin, continue or check the status of their transactions from wherever they wish. In this context, the choice and the optimisation of technologies to be used to simplify the administration and reduce bureaucratic burdens, should be made based on providing an effective, consistent and rewarding experience for the users.

In order to be able to offer this integrated experience - and a "single image" of the public administration - in the front-end, the operations and services within the administration need to enable a full integration of the service channels, i.e. the "back-end". This requires integration and sharing of data and processes. At the moment, only the physical branch of *Chile Atiende* provides transactional functions, whereas the telephone and digital channels provide only informational services.

Chile Atiende is an important case to illustrate how the perspective on service delivery and digital government should not be only technical, and how changes in the back-office should go hand in hand with the rethinking of the front-office. This requires, for example, an alignment of the strategies for administrative simplification with those targeting improved delivery of services achieved also through a more strategic use of technology by the administration. Administrative simplification and digital government are two policy areas proving important opportunities for synergies. Simplifying the public sector is a transformation process, and experiences in several OECD countries show that the use of digital technologies is critical for the transformation of the public sector. Sharing resources and data, and integrating processes and operations within the public sector, to ensure coherence and eliminate duplications and redundancies, are prerequisites of this transformation, and digital government can enable governments to better achieve their simplification goals and foster the transformation. Additionally, by enabling more user-friendly and easy-to-access channels for service delivery, digital government can play a key role in reducing bureaucratic burdens.

Hence, those responsible for setting the standards, goals and policy objectives for digital government are becoming increasingly more involved in setting strategies and defining agendas and key actions of administrative simplification. This is quite important to ensure coherence and alignment between digital government and administrative simplification. If these are not aligned, governments miss the opportunities to leverage different strategies to achieve various results. For instance, the digitisation of specific procedures or transactions linked to commercial activities – see as an example the issuance of business licences or permits – is pivotal not only to increase efficiency and accountability for the users, by providing them with the same quality of services and legal certainty, but also to improve public sector intelligence thanks to more easily available data and statistical information. The advantage for the public sector comes not only from the higher efficiencies determined by the streamlining of processes, or by the management of procedures in single digital one-stop shops, but it is also the consequence of the generation of information and statistical data that can be mashed and linked thus allowing to track performance more precisely, and to more accurately spot inefficiencies and opportunities to simplify the administration.

Better co-ordination, deployment and use of common platforms, shared strategic objectives are all key requirements to bring together individual efforts. The design and implementation of the *Chile Atiende* project shows for example the complexity of providing a general "umbrella" framework / model for integrated public service delivery, and presents the complexity of co-ordinating various actors and linking different strategies of the Government. The initiative, regarded as a good practice from other OECD countries at its inception, has led to fewer results than expected, the main reason being that it was not always seen as an opportunity to strategically achieve several important results and better co-ordinate actors.

After reviewing the main digital government initiatives, aimed at improving service delivery and simplifying the interactions between the users and the state, this chapter discusses some of the main preconditions leading to better results and puts forward some policy recommendation to help the government of Chile bring their digital government and administrative simplification efforts more closely together.

Current context in Chile: implementation of existing initiatives

Chile Atiende

The *Chile Atiende* project is part of the Digital Government strategy of the government of Chile to provide a comprehensive and sustainable solution for the delivery of government services (see also Chapter 5). Through the project, the government has tried to provide a multichannel approach to the delivery of public services, which aims at responding to users' needs, adjust to their behaviour, and design experiences that meet these needs regardless of the channel used to interact with the administration.

The *Chile Atiende* concept is strongly focused on improving user satisfaction, on simplifying delivery of, and access to, public services, on providing efficient and effective interaction between the state and the people to access information and benefits, to complete formalities belonging to the various institutions of central and local government. The ultimate goal is to leverage the use of technology for social inclusion, which implies, a user's perspective, that citizens' needs are better met and, as a result, their satisfaction is increased. From the state's perspective, more efficient and effective public services are provided, based on greater integration and shared data in support of more data-driven decision-making.

In this context, the technologies to be used are selected and optimised by providing effective, consistent and rewarding experience for the users. To date, there are three channels:

- physical presence, with a network of 206 points for attention and five vehicles on site, offering the possibility of accomplishing about 90 formalities from 28 institutions that have signed agreements with *Chile Atiende* (including the National Health Fund (*Fondo Nacional de Salud, FONASA*), the National Board of School Support and Scholarships (*Junta Nacional de Auxilio Escolar y Becas, JUNAEB*), the Housing and Urban Development Agency (*Servicios de Vivienda y Urbanización, SERVIU*) and the Electoral Service of Chile (*Servicio Electoral de Chile, SERVEL*).
- telephone channel (number 101) providing information on over 2 500 formalities and state benefits.
- digital/online channel, consisting of the portal www.chileatiende.cl – belonging to UMyGD – and accounts on social networks, managed by the Social Security Institute (*Instituto de Previsión Social, IPS*) – such as on Twitter and Facebook – where information on more than 2 500 formalities and state benefits are available.

The main precedents that led to *Chile Atiende* were the creation of one-stop shops for channelling the relationship between the state and citizens, such as the Easy Procedure (*Trámite Fácil)* initiative subsequently replaced by Chile Click; and the adoption of Law No. 19/880 on administrative procedures and interoperability supporting the setting up of the PISEE.

Chile Atiende has become an important step forward in the modernising the state and initiated significant progress in improving the provision of public services (e.g. in terms of availability and accessibility). Nevertheless, the model used to support its implementation has shown significant weaknesses from an institutional and an operational perspective, which makes it difficult at the moment to ensure its long-term sustainability and scalability. The main problem areas to be addressed are:

- Absence of a sufficiently robust governance and management structure, with roles and functions properly defined and distributed. *Chile Atiende* was implemented under the co-ordination of the UMyGD using the public service platforms of the IPS, based on informal agreements between the authorities in power. The resulting lack of a clear institutional/governance framework, has determined the direction and management capacity needed to ensure continuity and strengthening of the policy of multi-channel provision of state services;
- Focus on integrated services applied to the front office, but not to the back office, which means that process automation is reduced and the value of data as a key resource to support better integration and quality of services is less understood, and also to simplify formalities and procedures. As a result, the multiple service channels are not integrated with each other, traceability between channels is not feasible and transactions can only be carried out to a limited degree, which to date applies only to the physical channel while the other two have mainly an informative function.
- Limited streamlining of services offered aligned with the capacity and ability of the users of the different channels, and of the officials who operate them. In addition to the low transactional capacity and nature of the channels, several services were included in the physical channel as part of the agreement signed with the various institutions without necessarily addressing the users' needs. In several cases this created a supply structure that perceived more as an additional burden by the officials working on *Chile Atiende*, who have to be trained and have access to the various systems of each institution, than a real benefit for the users.

This ultimately has a negative effect on both the intermediate and end users of *Chile Atiende*. The citizens indeed obtain a limited quantity of integrated formalities on *Chile Atiende* due to the incomplete transactional capacity and no real multichannel presence.

Table 11.1. **Number of visits per channel**

Period	Physical	Online	Call center
2012	5 579 267	5 815213	939 098
2013	6 625 863	14 265 077	1 290 715
2014	7 907 886	18 062 707	1 428 494
2015	6 621 819	23 838 323	1 479 095

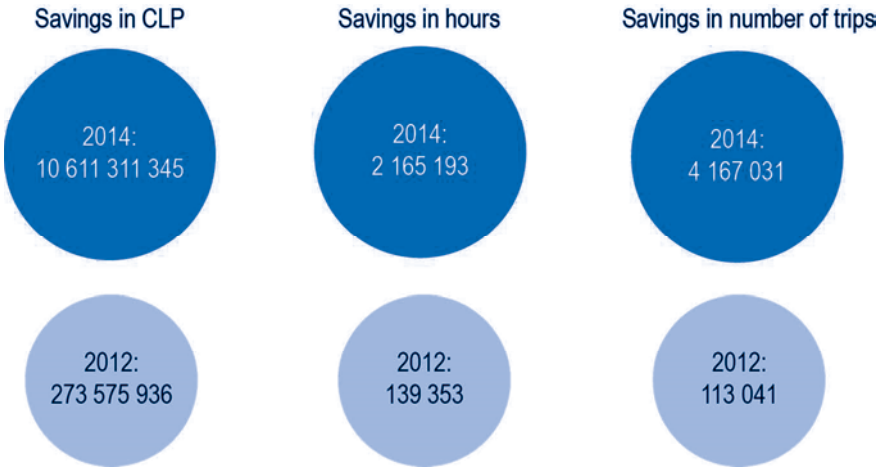
Source: *Chile Atiende* website, www.chileatiende.cl, accessed in February 2015.

The intermediate users, i.e. public officials operating the various channels of *Chile Atiende*, cannot provide an automated front office integration. According to the figures released by the IPS, there are some 1 500 officials working in the Customer Services Branch of IPS, which is responsible for the operation of the physical and telephone channels of *Chile Atiende*. Increasing attention to the intermediate users of the services would produce the positive external effect of improving the quality of the services provided to end users, also quantified in terms of the savings made possible for them.

To illustrate the impact that strengthening *Chile Atiende* would have on the users, it is illustrating to show how citizens' savings have evolved in the years 2012-2014 achieved through the use of the different channels.

Figure 11.1. **Citizens' savings due to the implementation of *Chile Atiende*, March 2012/14**

Service channels: physical, web and phone



Source: Government of Chile, Ministry General Secretariat of the Presidency, *Chile Atiende* Statistics.

However, what is even more relevant is that, according to the results of users' surveys:

- 24% of the people indicate that the telephone channel did not save them going to the physical office according to "*Chile Atiende* User Experience Study" by IPS, SEGPRES and IPSOS Chile (February 2014).
- 41.7% state that the web channel did not save them going to the physical office according to Online Survey *Chile Atiende* portal (March 2014), conducted by UMyGD of SEGPRES.

The foregoing may probably be explained by the fact that the online channel is not really transactional at present. So as to move on to that stage thereby maximising the impact on the administration and on users –the project should be also be used as a reason to review of the formalities and procedures required by the relevant laws. The intention would be to simplify and reduce burdens as far as possible. This would make it possible to provide the integrated system of service required to provide transactional services. Clearly, the strengthening of the technological platform, the governance and the strategic management supporting the greater sophistication of this project to provide a multi-channel service, can help to increase the administrative simplification required to offer integrated services. As a result, savings will be made, the impact will be improved and user satisfaction will be achieved.

Empresa en un dia

The initiative Your Business in a Day (*Empresa en un día)* is based on Law No. 20.659/2013 establishing a website offering transactional services that make it possible to complete online all the procedures needed to set up a company in one day; on Law N. 19.799/2002 on advanced digital signatures and e-documents, laying down the conditions for using the signature widely for a number of services; and on Law No. 19.880/2003 creating the basis for the administrative procedures and introducing the "once only" principle.

The website is fully transactional; it allows users to complete the service using the advanced digital signature, or a notary can complete the procedure on the user's behalf. This initiative has led to significant reductions in terms of time and the cost of completing the service. As an example, from USD 600 for the digital signature – approximately USD 35 per year plus the cost of a token equal to USD 50 per year – or about USD 119 for a notary but paid once only. Thanks to this initiative, Chile has also introduced a standard approach to the setting up companies. Statistics indicate that the number of users is high, and that 68% of new companies are set up through the online system. Additionally, figures show that there has been a steep increase in the number of companies being set up. The fact that foreign users are also taking advantage of this initiative to set up companies in the Chilean market proves the good effect that *Empresa en un día* can also have on inward investment, and on increasing national competitiveness.

In terms of future challenges, the necessary alignment with other key initiatives being development, such as Business Desk (see section below), and to-be-developed – like *Chile Atiende* 2.0 – will require a good level of co-ordination among the various efforts as well as the integration of platforms (e.g. for *Chile Atiende* web and for Business Desk).

Business Desk

The initiative *Business Desk* (BD) implemented by CORFO (Ministry of Economy, Development and Tourism) was established with the Supreme Decree No. 267 of 26/12/2014, that defines the use of the project's resources and goals, and that regulates its relations with the various parts of the public sector. The project was formulated officially in 2014 but its implemented started in 2015, as part of the Agenda for Productivity, Innovation and Growth of the Chilean government. Its aims are to lay the foundations for a new phase of development of the Chilean economy, to create opportunities to produce new goods and services, to develop intelligent industries and to generate innovation hubs. This is a forward-looking approach to a new form of development that does not just depend on the exploitation and export of natural resources, but that opens up to new emerging sectors capable of producing new goods and services, of developing industries and generating innovation.

The purpose of the BD project is to develop a technological platform enabling micro, small and medium enterprises to better manage their businesses, their operations, to obtain better information and documentation as well as general interactions with the public sector and eventually among businesses themselves. Some of the success factors for the BD are the interoperability and re-use of the existing digital service provided internally to and within institutions, such as the PISEE, the *Clave Única de Personas*. The BD is indeed expected to be an integrated, content-oriented, interactive and easy to use digital platform, in which companies will have access to a customised virtual business desk, to interact with the public sector and other private agents.

The technological platform for businesses will support administrative simplification and integration of formalities and services that will facilitate closer interaction between companies and the state. Furthermore, it will promote the adoption of improved standards of efficiency and effectiveness throughout the public sector, and will help to generate savings for both the companies and the state. The transaction costs for companies to interact with the State will also be reduced, as a single point of contact will provide and standardise models of interaction with the state. BD indeed aims at reducing the high transaction costs that businesses have to bear while completing formalities or accessing government services. Formalities connected with the business establishment would be

streamlined to improve investment opportunities, or carry out operations more efficiently. According to the interviews held with key stakeholders in Chile, the problem has been diagnosed many times and a solution has been repeatedly requested by SME's business associations in the country. According to the *Empresa en un dia* data, 27 247 companies were set up in the first half of 2014 through the www.tuempresaenundia.cl portal, at an average of 3 892 per month.

Most of the existing platforms providing digital government services to businesses will continue to exist and the plan is to integrate them with the BD platform with the SICEX for instance for all the formalities related to companies' import-export processes. It is expected that when the platforms are integrated, they will provide additional value for companies, since SICEX currently covers all formalities. Finally, the development of the BD includes promoting the use of PISEE for integrating service provision and greater co-ordination in developing the platform, with the UMyGD as the role of co-ordinator, to improve provision through digital government.

BD is a very good example of a project providing services to businesses based on a "life cycle" approach, which entails inter-sectorial collaboration and alignment. From an administrative perspective, CORFO enters into co-operation agreements (*Convenio de Cooperación*) with the relevant institutions identifying the objectives and the way in which they will work together. However, given the nature of the project, what is particularly relevant is that its establishment could count on substantial political support, and that the CORFO team meets the departmental heads in the relevant ministries/agencies regularly, and works closely with the relevant teams at the technical level.

The pre-assessment, together with the consultative and collaborative approach, on which the development of BD are based, are probably the most important aspects of the implementation strategy of this Initiative which can be regarded as a very good practice in the development and implementation of initiatives that cut across the public sector.

As an example, a preparatory study was carried out in 2014 to identify the list of formalities required, indicating the institution for which they were required. The study also included a revision of all web pages, of the agencies uploading information on their activities onto the transparency portal and on the *Chile Atiende*, etc. In 2014, CORFO updated all the links to platforms providing information and services on line and prepared a catalogue of all the required formalities relevant to the businesses, the agency offering them, if digitally available or not, etc. This preparatory effort was linked to another initiative, Chile without Red Tape (*Chile sin Papeleo*), that aims at making access to the administration less cumbersome.

A specific study on the land registry led to the information repository being automated, and to 900 relevant formalities being identified for businesses. Based on a feasibility and demand-based approach, CORFO reviewed them to determine which were a priority for businesses and could be made available on line. For the time being, the immediate result is the commitment to start to digitise some formalities by the end of the 2015.

In addition to the studies mentioned above, a focused group with 100 SMEs was organised to identify the main formalities and the final list was chosen by the Council of Public and Private Advisors (*Consejo de Asesores Publico y Privado*) that combines several Ministries (Economy, Finance, and SEGPRES), the Chilean Association of Municipalities and the eight national directors of the main public institutions offering

services and formalities to businesses, as well as 12 representatives from the main business associations in Chile, of which 6 represent larger industries.

Although the approach underlying the development of this initiative is to be praised for its inclusiveness, BD appears a missed opportunity to utilise a new project aimed at improving service provision and also to foster administrative simplification. The project seeks to integrate formalities, procedures and services more as opposed to re-structuring them, since for the time being the BD has no power to foster administrative simplification. The BD does not have the mandate to revise the formalities to identify what can be simplified and which duplications may be eliminated, as the responsibility lies with the agencies only. For the moment, it is by studying the workflow that agencies see opportunities to simplify. As a result, the exercise referred to above that led to the identification of the 900 formalities, could not also be used to actively promote administrative simplification.

In many administrative contexts, the elimination of administrative formalities and the sharing of data can become highly political, as is possible in the context of the Chilean administration. When this happens, it is often due to a culture within the public sector that links power with the "ownership" of the processes and of the data underlying the completion of formalities and the provision of services. Additionally, in some instances, some procedures and/or formalities require the fees to be paid which are sources of revenue for the agency administering them. Some OECD countries, like Denmark, with a long history of data registers managed by individual agencies, are aiming at developing a business case through the Basic Data Programme to argue the potential value for agencies of sharing their data free of charge with other parts of the administration. The aim of identifying alternative benefits to compensate for the loss of revenue so as to gain political buy in across the administration and be able to boost sharing and integration among the agencies.

Even though simplifying administration and reducing burdens appear to be a positive element of the digitisation process as well as the improvement in the workflow implemented under the BD. However, the opportunity has certainly been missed here to link the digital service provision and administrative simplification agendas, and to exploit the impact of the use of technology to modernise the public sector. In order implement the initiative, the Ministry of Economy, Development and Tourism focused on go ahead with enabling the BD's "core business", i.e. the digitisation of formalities. In addition, this has led to the simplification of formalities and greater efficiency at least as a result of the formalities being linked and integrated on line. However, further thought should be given to the broader potential impact of thisinitiative.

Chile Atiende PYMES

The Business Desk project complements a number of previous initiatives which have been very important in providing benefits to SMEs, including providing better services, easier access to information and enabling new ways of interacting with the public sector. SMEs interact with the State since their inception and throughout their life cycle, facing a series of situations that are often barriers to the development of their core business and supporting operations, among which we can identify:

- duplication of functions and of requests for documents to be submitted to the public sector
- limited integration between public services

- cumbersome paperwork and procedures requested to complete a formality or obtain permits for running the business.
- different levels of technological maturity between state services
- difficulties of access (remote care, language, etc.)

According to the Internal Revenue Service, in 2014,[1] 881 857 companies were classified as SMEs, micro (669 515), small (184 654) and medium (27 688) enterprises accordingly. The contribution of SMEs to the Chilean economy, as mentioned in Chapter 10 of this review, is very important, which is why it is vital to ensure that any action aimed at reforming or modernising the provision of services in Chile takes into consideration how to respond to the specific needs and necessities of this specific users' group.

This chapter has previously underlined how users' experience can be improved through digital government, thanks to simpler administrative procedures and fewer administrative burdens, but also as a result of the easier service access it enables. As also highlighted in Chapter 10 of this review, not every SME has easy digital access, which is why administrative complexity and burdensome administrative procedures for setting up a business still remains a challenge for many Chilean SMEs.

Chile Atiende PYMES, managed by the Ministry of Economy, Development and Tourism, oversees the functioning of the portal dedicated to SMEs, is a key opportunity to reverse this trend and prove the government's awareness on the need for orienting efforts and plans towards the SMEs' needs. For the future, substantial convergence and co-ordination of *Chile Atiende PYMES* with Business Desk is planned, which, in particular, include the integration of plans for the governance, service provision, management of processes, deployment of technological solutions and staff's capacity to apply the definitions already adopted by Business Desk. The goal is to generate a unique platform and to capture synergetic benefits to manage in an orchestrated manner the services that businesses demand from the state.

Complementarity and co-ordination of *Chile Atiende PYMES* with BD are highly recommended to ensure that parts of the administration take advantage and use the platforms installed to date, the service model developed, the IT architecture and the model established for the government, in order to provide the necessary synergetic capabilities in compliance with the guidelines of the Agenda for Productivity, Innovation and Growth led by Ministry of Economy, Development and Tourism. The ultimate goal is to develop in the future a single supporting platform integrating *Chile Atiende* web channel, *Chile Atiende PYMES*, and the Business Desk. This will require a strategic alignment of the relevant agendas (e.g. digital government and national digital agenda, administrative simplification, service provision and national productivity agenda).

The alignment of the various strategies is particularly important considering that 98% of companies in Chile are SMEs. A real understanding of the value of technology for the socio-economic development of the country needs to improve built on the recognition of the strategic relevance of ICTs for increasing productivity (particularly of SMEs). The current context provides the projects described above a good opportunity to have an effect on a significant part of the private sector in Chile. According to the business associations interviewed during the peer review mission to Chile, the penetration of technology depends on the size of the company, and there is a digital gap among many of the micro

1. Internal Revenue Service: http://www.sii.cl/estadisticas/empresas_tamano_ventas.htm

entrepreneurs (for example in the transport industry or in the manufacturing area) that use technology through the young people in their families. Additionally, SMEs do not use the digital channel unless it is compulsory, very much in line with an overall cultural context where Chileans do not do things unless they are mandatory.

The foregoing underlines the necessity to take the digital gap into account which, on the one hand, needs to develop capacities and, on the other, to provide digital content (information and services) relevant for SMEs and not only for big companies. SMEs often consider that information is often not friendly or clear enough, and not responsive to their needs. Involving SMEs and incorporating their needs appears to be a necessity as these initiatives are further implemented. There is a good opportunity right now that could offer the chance to deal with limited skills availability, as a good solution is to develop applications and use m-government to better respond to the needs of SMEs.

The potential to increase the penetration of ICTs in SMEs is high, but this needs support and a good understanding of it being an issue in capacity building. To increase the e-readiness of specific capacity building programmes could be designed in the ICT domain, and the IT companies could support the government in this effort. The SENCE currently provides training opportunities for big companies, and could also design programmes specifically for SMEs.

SICEX

The Integrated Foreign Trade System (SICEX) is a project that involves the development of an online single window (one-stop shop) for G2G or G2B foreign trade, i.e. a system that integrates all the processes involved in foreign trade operations, be they exports, imports or transit. It was created by Supreme Decree No. 1049, D.O. 05/11/2010 by the Ministry of Finance and once the fully-fledged implementation of SICEX will be completed, exporters and importers will be able to complete transactions through a single channel, any time and any place. The use of the SICEX system is voluntary and free, built on the basis of international standards, started in 2012 and was completed by the end of 2015. Currently, both operating modules are functioning (exports and imports).

The development of the current SICEX was intended to tackle three major problems in particular to advance towards a single window for foreign trade:

- Ensuring political commitment. Previous attempts to develop SICEX were not successful and did not lead to results, probably since the governance and financing aspects of the project design had not been thought out efficiently. This problem was solved when a Commission composed of 5 under-secretaries (*subsecretarios*) was set up.
- Ensuring the institutional commitment: A specific programme under the Ministry of Finance has been established to co-ordinate project implementation.
- Ensuring the financial commitment: The different services provided by the various institutions should be integrated under a single platform, but often the technological asymmetry across institutions is quite substantial. This requires financial autonomy so that the initiative can allocate a budget to the individual institutions that need funds to upgrade the technology, or to engage consultants under the project to work with the various agencies.

The Ministry of Finance leads and co-ordinates this project, in which are also involved, among others: the National Customs Service, the National Fisheries and

Aquaculture Institute of Public Health, the National Agricultural and Livestock Service, the Chilean Copper Commission, the Ministry of Health, the Internal Revenue Service, the General Treasury of the Republic, the Civil Registry, and SEGPRES.

SICEX can be an instrument of great importance for the country's competitiveness, as it can:

- facilitate foreign trade
- reduce the time and cost of exports and imports
- simplify existing procedures
- contribute to public sector efficiency and process transparency.

The fully-fledged development of the SICEX into a real one-stop shop can reduce the time needed to export and import products which can have an impact on the efficiency of the service value chain, on the competitiveness and on the system of supervision and rule making.

Through the gradual implementation of each of the project's stages and modules, the various functionalities are designed, developed and implemented thereby enabling testing. Each module begins with the release of a pilot with a limited number of users and functionalities, and then gradually increases so that the respective module is completed.

The export module has been operational since 2014, and any product may be exported through SICEX. The imports module pilot started in August 2015 and became fully operational in December 2015. During 2016 improvements to the technological platform and modules will continue.

Future steps in SICEX's development include the connection with logistics platforms developed in ports, allowing both online handling of the nationwide logistics operation of the shipments and document processing. This will reinforce the B2B element among the port community systems and companies. Up to now, the services are the basic services related to imports and exports.

There is also a plan to connect SICEX platforms with other countries so that the processing carried out on line in the country can continue on an electronic path to its destination, enabling traceability and visibility of the entire foreign trade operation. In this regard, SICEX is already working with the members of the Pacific Alliance, Peru, Colombia, Mexico and Chile, in a pilot line between these countries processing phytosanitary certificates. Once the target reached, it may be interesting to add other documents and project the model for other countries wishing to join the initiative. Further developments also include link-ups with the BD, with the idea of enabling full integration and sharing of information and data at any time. This can boost efficiency while increasing transparency.

SICEX provides a good example of how, over time, the change has been accepted by the various public actors that saw the impact on their core businesses, and as they work on phase 2 and B2B there are also active requests from users. The Government could consider making the use of SICEX mandatory. Businesses are the user group targeted by some OECD member governments to increase the use of online channels and therefore reap the benefits of the investments made in the digitisation of the public sector which requires a sufficiently large critical mass of users of online services.

Box 11.1. **The frontier of digital government in Denmark: Expanding mandatory use of online channel**

eDay 1: By 1 September 2003, all public sector organisations in 271 municipalities, in 14 counties and in central government had to send internal written communications by email only, instead of by traditional physical mail.

eDay 2: By 1 February 2005, all citizens and businesses had the right to send secure electronic communication using the common public sector digital signature and encryption to public authorities and had the right to expect secure electronic communication from public authorities.

eDay 3: eDay 3 had three goals to be achieved by 1 November 2010: i) each public authority had to offer secure single sign in using Nem-Login (in English "Easy-Login") and the Danish second generation digital signature NemID (in English "Easy-ID") when accessing citizen oriented online services; ii) all citizen-oriented online services had to be integrated into the Danish national citizens portal borger.dk; iii) all public authorities should have been ready to offer secure digital communication through Digital Post (a government authorised digital letter box).

eDay 4: This marked the transition to digital-only communication between citizens and businesses, and public authorities using the government provided digital letter box – Digital Post. The initiative is part of the Danish government's push towards mandatory "digital-by-default" – demanding citizens and businesses to use the digital channel only by law. eDay 4 concluded a remarkable development of progressively introducing mandatory use of Digital Post for all. Businesses were obliged to use Digital Post by 1 November 2013 with citizens following on 1 November 2014.

Source: Information provided by the Danish Agency for Digitisation for the OECD (2014), *Spain: From Administrative Reform to Continuous Improvement*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264210592-en.

The case of the ports

The National Agenda for Productivity, Innovation and Growth of the Chilean government underlines the relevance of "logistics" as vital to assist in the state modernisation. The focus is on having a long term strategy for 2030.This is a complex and multi-dimension agenda that includes technological issues as well as matters concerning the development of competencies as well as regulatory reform. The Commission of ports and logistics (*puertos y logística*) was assigned to follow up on the implementation and received a lot of support from the various actors in the sector.

The increased port capacity has two pillars. The first related to investment in new port and ground transportation infrastructure, and the second associated with the management of existing infrastructure. Achieving the second objective implies incorporating digital platforms. This is justified to the extent that it adds value to the trading process, and therefore to the end users. The higher value can come from reducing the time required for cargo clearance, giving greater flexibility to the process, and thus a better use of infrastructure and resources, such as processing data to propose improvements in the management of the supply chain. In turn, improving the quality of market information and its availability for analysis can enhance the performance of the various operations.

This is why the goal is also to integrate the SICEX technological platform with other relevant ones such as the logistics management platform, called Port Community Systems

(PCS).This goal seeks to increase the efficiency of processes taking advantage of the gains from the co-ordination of the actors involved in the transfer and circulation of foreign trade cargoes.

In terms of digital platforms, there are some institutional issues due to the fact that there are 26 public services linked to foreign trade involving a large number of institutions. Therefore, redesigning processes and services will require a certain degree of co-ordination, as it is not simply a matter of developing a platform or software, but of ensuring that all the institutions that provide the 26 services can use the same platform. Aligning all the services in a way that all can be accessed in the single window requires institutional reinforcing (for example enabling SICEX of the right institutional framework that facilitates political commitment, an adequate budget, to sustain the implementation of the modernisation programme, and to push for re-engineering all the processes in the different institutions that have to contribute to the SICEX).

In addition, there are also technical issues related to internal services – a second software layer that offers common services to the institutions – and to external services: level of the software that enables users to add their own services. For example, those offering services to the tracks that arrive at the port are services that increase the ports' competitiveness. The next targeted stage would be, for instance, the telepayment or free flow that, at the same time, would make the transfer easier but also help transferring information on the tracks arriving at the ports.

The great potential is to improve the efficiency of the ports, provide information to the private sector and users, and visibility of users on the efficiency of services. This can improve the availability of information that can lead to KPI and improve the quality of the services; the Management Improvement Programme (*Programa de Mejoramiento de Gestión, PMG*) could for instance be linked to the core business of the area (e.g. not in terms of better quality of the service delivered).

Integrated SICEX and PCS in ports would not only allow foreign trade procedures to be efficiently processed and the co-ordination of civil servants improved, but it would create the ability to generate a flow of information and data between supervisory bodies to support their work, which should result in more expeditious flows of cargoes circulating in ports.

However, since public agencies involved in maritime activities are numerous – ports administratively belong to various authorities – the implementation of efficient co-ordination, monitoring and constant evaluation is essential, together with the definition of common criteria that promote efficiency and limit arbitrariness by implementing regulations. Combined with the many formalities and procedures that have to be carried out by an exporter/importer, and with a lack of understanding of the foreign trade system, this could have a harmful effect on investment.

Instruments to align agendas: policy coherence, effective collaboration and co-ordination

Effective and strategic alignment of the administrative simplification and digital government agendas in order to create synergies, that help to improve the quality of life for citizens and businesses, entails a number of preconditions supporting the design and implementation of relevant initiatives. A centrally co-ordinated perspective and more efficient and strategic collaboration require a solid governance framework, the deployment of “intelligent” solutions that break the public sector inertia and foster

interoperability and policy making. These are all some of the key actions that need to be undertaken. The sections below aim at creating a *status quo* in Chile in relation to the use of some policy tools to support the integration of the two agendas.

Better collaboration and co-ordination

The section above has provided information on ongoing initiatives and their planned developments which illustrate the important steps undertaken by the government of Chile to strategically, technically and operationally align important complementary efforts aimed at improving the quality and accessibility of public administration for businesses and citizens. Nevertheless, a closer look at some of the experiences in the implementation of some of these projects show that effective collaboration still represents a challenge. In the case of the BD for example, collaboration is not always easy due to a number of reasons. The perceived threat of BD's intermediation between the business and the agency providing the service is often the main source of resistance together with civil servants' complaints concerning additional work, limited funds availability, and other institutional objectives. The BD's access to a full list of information and flow of services between the agencies and business can make it possible to assess the level of service provision, the quality of information flows, etc. which can be perceived, by some institutions, as a way to control and benchmark their level of performance in service provision.

Good existing examples of internal collaboration among institutions include the Internal Revenues Service's work with the treasury, as well as the collaboration of the Treasury with the BD. The latter collaboration aims at making it easier for each service to be processed with a "digital payment button" that would also be accessible through the BD and to assist businesses that do not have the capacity to use the "digital payment button" through the capacity building activities of BD. This is an excellent example of the concrete impact that collaboration can bring in terms of higher efficiencies for individual institutions (e.g. thanks to the higher use of the "digital payment button") and to end users (e.g. thanks to the additional support received as the effect of the integration of the two initiatives).

Fostering effective collaboration requires overcoming resistance, which implies being able to provide incentives and showing the value emerging from working differently. Data on higher efficiency, improved institutional performance and higher user satisfaction are ways to give civil servants the incentive to take up new ways of working. Performance indicators linked to BD, for example, can be used to boost positive pressure on the agencies to improve their performance. It would help finding a real champion ready to collaborate with CORFO enthusiastically that could pave the way to effective collaboration.

In order to deliver the expected value, the development of integrated systems that help to improve service provision while simplifying the administration requires the critical mass of users for the service. While projects' implementers cannot count on voluntary collaboration, in many cases the mandatory nature of the adoption can help overcome resistance (e.g. the decree establishing the BD does not anticipate mandatory adoption but leaves it up to the agencies to decide whether or not to join the BD).

Box 11.2. **Portugal: linking strategic objectives**

Portugal has been for years implementing a series of ambitious and far-reaching public sector reforms to meet growing challenges and demands on the Portuguese economy and its public sector. Since the early stages of Simplex the Government has designed and implemented high-profile initiative and adopted an approach quite unique among OECD countries – which count on strong political support to address the need for simplifying the Portuguese public sector and its service delivery through ICT. The focus has always been on recognizing the key value of digital government as a lever for broader administrative simplification activities improving the quality of service delivery.

What makes the Portuguese approach different is the fact that the same Digital Government Strategy connects the three pillars of: Public Service Delivery, Administrative Simplification and Digital Government. The Agency for the Modernization of the Public Administration – responsible for setting the strategy and for co-ordinating its implementation across the administration – while performing its tasks related to policy and standards design, and implementation oversight, ensures compliance and use of common standards, platforms and strategic directions. This secures collaboration of actors and alignment of actions in view of common integrated interrelated goals. Initiatives aimed to simplify the administration, strengthen service delivery and foster digital government are coherently intertwined.

This is a concrete example of a shift from e-government to digital government right from the early stages of policy making, This has had an impact on the further development and implementation of initiatives such as Simplex. Originally conceived as a way to link actions aimed to increase the use of ICTs in the public sector and those focusing on administrative simplification to improve service delivery it has now become one of the most emblematic projects of the new government in the Administrative Modernization domains. Simplex sessions are being held locally all over the country and this round of local workshops envisages identifying problems and obtaining ideas/solutions from local stakeholders (public, private). Besides this kind of national roadshow of workshops, several encounters with central public administration bodies are being held. This round started in January 2016 and will run for about 3 months. The main goal is to present a Simplex program 2.0 (Startup@Simplex) in May 2016 built on innovative ideas crowdsourced from the different stakeholders. The main goal of the Startup@Simplex is to transform business ideas into government modernisation solutions.[1]

1. For more information on Simplex: www.simplex.pt; https://www.youtube.com/watch?v=hUNJVtVhMP0; https://youtu.be/tT7xcCXddhY?list=PLHQ3AudRfzk8oArT58fUfB2koYbtJqXzp.

Interoperability: a technical term with strong impact on policy implementation and service delivery

Interoperability of information systems is a common ambition across governments. This is because the agility, responsiveness and coherence of public sector organisations depends on their capacity to share and exchange information. However, traditional information systems were rarely designed to allow easy exchange of information. Many public sector organisations today suffer from slow and dispersed access to information, which affects their capacity to make good policy choices or to respond to requests in timely and accurate ways.

In a nutshell, interoperability means that individual information systems are able to talk to each other, to exchange and compare data in an automated manner. Where information systems are not interoperable, information has to be retrieved and transferred manually. But what interoperability of information systems actually means, from a policy-making perspective, is that it enables governments to act more coherently throughout all phases of the policy process. Identification of policy problems and their placement on the agenda are facilitated when analysis is based on all the relevant data

available, e.g. information from national registers and other operational information systems.

Formulation of policy responses to an issue needs sound impact assessment which, in turn, depends on the quality of information available at the time of the assessment. Implementation and evaluation improve where information on results and impacts is readily available across governments. Finally, the ambition of governments to establish "no wrong door" or "once only" principles requires interoperability of government information systems to channel requests across the administration and assign responsibilities to respond to feedback received from stakeholders.

Hence, interoperability of semantics, data and platforms is essential to enable the integration of processes and procedures leading to simpler, more accessible, innovative and more efficient administrations. The interoperability platform prevents people and companies having to visit several public institutions to gather information, or complete formalities, required for their dealings with the State. Interoperability frameworks are therefore intended to secure the achievement of the desired level of technical, semantic and organisational interoperability – as well as the governability of the IT systems and applications deployed and used across the administration and in the various business domains (e.g. health, social services, education, security).As a result, interoperability frameworks are expected to sustain co-operation and exchange of data and information among public agencies for improved service provision and access to information (seen as public goods).

Experiences in OECD member countries show different drivers for a country's pursuit of interoperability. The targeted outcome will determine a country's approach for developing an interoperability framework. For example, some countries may be inspired by the need to make it possible for older stove-piped information systems to communicate with each other; others may aim at cutting down on costs associated with managing and exchanging digital data and information organised and formatted in many different ways, leading to time delays, data errors and multiple data entry by citizens and businesses. Others' priorities may include having the infrastructure required to share services and exchange information, efficiently and securely, among the various agencies of local and central government to deliver more integrated services.

Despite the various drivers for interoperability, experiences in other OECD countries show that it can indeed lead to simpler administrations and better service provision thanks to the higher flexibility it facilitates, to the easier scalability in the development of digital government services it supports, as well as to the development of integrated and transactional services among public agencies.

In the short term, it can provide a framework for effective, efficient and transparent interaction of systems based on public data, which can support the strengthening of single points of access for citizens and businesses. For these benefits to be reaped, it is necessary to have a critical mass of users across the administration. Recognising this need, some OECD countries such as Estonia and Portugal made the use of the interoperability framework mandatory for the central administration.

Box 11.3. **Achieving interoperability in Portugal**

Portugal views interoperability first as a semantic challenge, particularly the importance of defining public sector processes, data models and information entities (e.g. citizen, address, building), with the assurance of an inter-organisational strategy, where each organisation remains responsible for data, information and systems. Like other OECD member countries, Portugal was challenged by the need to make old stove-piped information systems communicate with each other. To meet this challenge, an interoperability platform was developed providing the following capabilities:

- Data integration. The adoption of a standard data model that allows different government systems to exchange data. All government agencies can therefore accept a single citizen data submission – such as a change of address or name – eliminating the need for citizens to fill out redundant paperwork.
- Application integration. Web services that connect all applications, regardless of programming languages and hardware.
- Simplified identification. Citizens identify themselves once to the Common Services Framework and can then submit data to multiple government agencies, although citizens continue to have distinct identities with each agency. Once data is sent over the network, identification consists of embedded individual identities based on random numbers. Unique identification numbers are not allowed according to the Portuguese Constitution.
- Privacy and security. Active Directory Services ensure that only encrypted tokens are sent over the Internet, not identification information. Agencies may also send encrypted messages over the Common Services Framework. The Interoperability Platform serves as the foundation for the enterprise architecture. It provides the technical foundation for communication among government agencies, defines the information architecture for the Portuguese public administration and opens possibilities for re-arranging and changing organisational structures and workflows.

The purpose of the Interoperability Platform is to improve workflows and service orientation, rather than share information and data. The Interoperability Platform was established in accordance with the European Interoperability Framework for Pan-European e-Government Service. Use of the Interoperability Platform and the Common Services Framework is mandatory for Portuguese central government organisations, but not for autonomous regions and municipalities. Each public authority decides on access criteria, for example cross-checks with tax and social security.

Source: OECD (2011), *Towards More Effective and Dynamic Public Management in Mexico*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264116238-en.

The government of Chile has worked on various initiatives for the implementation of a software and hardware platform designed to optimise the exchange of information and data between different institutions. This initiative is called Integration Platform for the Electronic Services of the State (*Plataforma de Integración de Servicios Electrónicos del Estado, PISEE*) and is in operation since late 2009. The aim of the platform is to optimise the investment made by the State to obtain interoperability in institutions, optimising processes and offering a unique integration service bus.

Its use is facilitated through the Basic Law on Administrative Procedure by State agencies with the intent to increase the number of public agencies using the platform in order to promote greater transparency, efficiency and simplification of administrative acts

and procedures. This effort will eventually translate into benefits that touch citizens through simplification of procedures and not having to provide information held by another public institution many times. At the moment, SEGPRES runs the PISEE; however, when institutions do not use that platform and share information using their own systems SEGPRES has no enforcing power. The use of PISEE is not mandatory for public institutions, and currently only 23% of the systems of the public administration uses the PISEE according to the Study of Digital Maturity Model.

Further progresses in interoperability can be hampered not only by the non-mandatory nature of the use of a common platform, but also by the existence of significant differences in the levels of digital maturity across the various agencies. Chile conducted a study on the level of digital maturity in its public sector and is also conducting analysis to understand the level of digitisation in local government. Preliminary results show room for improvement in areas relevant to the creation of an adequate context for greater sharing and integration, e.g. in terms of skills and capacities to develop IT systems and projects, as well as the level of development of the multichannel provision of services to citizens and businesses.

The Chilean administration is aware of the need to update the whole interoperability framework and to add more institutions to this platform and strengthen their technological capacity migrating to a new infrastructure.

Box 11.4. **Interoperability Framework in Estonia**

Estonia has developed a relatively high degree of interoperability between government and other information systems. In doing so, it can build services that exploit the availability of a maximum of information, create services that proactively address user needs and support domain-specific policy objectives, e.g. in the areas of social security and education.

The gradual creation of a framework of core principles supported by laws and infrastructure enablers has given the government greater agility in responding to changing contexts. Strong political commitment and backing for the digitisation of the public administration started in the 1990s and has ever since continued with a focus on turning state information infrastructures into a resource and foundation for coherent decision making and service delivery.

The following laws and policies established the necessary building blocks part of the framework enabling interoperability:

- Since 1990 Estonia uses a personal identification code (*isikukood*) to uniquely identify each citizen and resident in government information systems. This has the advantage of facilitating data exchanges between different administrations and is an important building block for the implementation of the "once only" principle (see next point).

- In 1997, the "once only" principle became a legal obligation, meaning the public administration could not ask an individual to provide information she or he had already provided to any part of the administration. Political commitment to make the principle a reality, coupled with the understanding that speedy and comprehensive availability of information for decision makers is critical led to the development of a national interoperability infrastructure for real-time exchanges between organisations. The data exchange layer X-Road was launched in 2001 and has since become the standard platform for streamlining services between government agencies in Estonia. It is also used to create seamless workflows that involve non-government actors, e.g. to exchange information on income and assets from private companies to taxation and social security authorities.

Box 11.4. **Interoperability Framework in Estonia** (*cont.*)

- The Digital Signatures Act in 2000 recognises digital signatures as being fully equivalent to hand-written signatures, both in commercial transactions as well as transactions with the public sector. The Estonian national identification card and later the equivalent mobile-ID (jointly hereinafter: national digital ID) became the building block of a national personal key infrastructure (PKI), turning it into a legitimate means for authentication and authorisation in digital transactions, i.e. electronic signing. The dual use for commercial and public sector transactions, as well as the obligation for the public sector to recognise the national digital ID, created an environment that stimulated the development of compatible public services as well as their take-up by the general population. All digital public services can be accessed using the national digital ID, including electronic voting, electronic prescriptions, electronic health records, registration of businesses, declaration of residence, social benefits claims.
- Estonia established as a principle that an individual should have control over how their personal data is used and should be able to see which civil servant accessed their data. This was put into practice by creating a mechanism that logs any access to personal data and lets individuals use the public service portal www.eesti.ee (or the national healthcare portal for healthcare records) to monitor which department consulted their data. A data protection claims procedure can be launched at the suspicion of a privacy breach. This is a very important vector for openness and transparency as it gives citizens not only the right to have their privacy protected, but also the actual tools to empower them to monitor if that right is being respected.

Source: OECD (2015), *OECD Public Governance Reviews: Estonia and Finland: Fostering Strategic Capacity across Governments and Digital Services across Borders*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264229334-en.

e-ID

The *Clave Única* (unique key) is an initiative administered by the Civil Registry that seeks to provide citizens with a single electronic identity (ID and password) for conducting online transactions with the state, eliminating the need for multiple registrations for a single service.

The biometric key is a certified e-ID for individuals. At the moment there are 5 000 000 Unique Keys of which 800 000 have been issued for individuals. Planned developments for 2015 include the possibility to obtain the *Clave Única* through the portal (https://www.claveunica.cl/preguntas/quees) that would work 24x7 and the introduction of a *Clave* through SMSs enabled through the interoperability framework.

For online authentication, public institutions apply to register through the Civil Registry and data are transmitted securely and reliably through the PISEE. At the moment, the use of the *Clave Única* is mandatory on the civil registry portal to obtain personal data and certificates, but there aren't many services that use the PISEE, as many institutions have their own digital identification system - e.g. since 2004 the Tax Administration and Treasury have their identification systems and their own interoperability services for services' users and to process payments – or claim being limited in the use of the *Clave Única* for technical reasons.

Gradually, more institutions will be incorporated into the *Clave Única* system as the capacity to provide online services will increase. This will allow management procedures to be streamlines, facilitating application to benefits' programmes, fostering public sector collaboration and citizens' participation, among others. In this regard, it is noteworthy to underline that the authority facilitating the implementation of a centralised service portal will enable access to various services through the common authentication system.

The Treasury is one of those key actors that, due to the nature of its mandate, requires interoperability with a number of stakeholders, e.g. to enable payments to users on behalf of other parts of the administration. It also runs the system collecting all the debts owed by individuals to the various parts of the administration. This makes the Treasury an important service provider to large part of the administration and its use of the common digital enablers, such as the interoperability platform and the single digital identifier, would be critical.

The Ministry of Housing and Urbanism instead provides a very good example, as they not only apply the "once only principle" but they also use the *Clave Única* of the Civil Registry. The Ministry publishes information on *Chile Atiende* which at the moment does not permit completion of the transaction for which users are redirected to the Ministry's portal. Once the new platform is developed, anticipating the use of the *Clave Única*, the integration of the Ministry of Housing with the new platform will be easy.

The Ministry of Education also provides an interesting example. They signed an interoperability agreement (*Convenio de Interoperabilidad*) with a number of entities. This was necessary to enable information to be shared between institutions in the Chilean administration, and this necessity makes the process very cumbersome. Legislation enabling the sharing of data and information within the administration would certainly promote further developments in terms of integration and could have an enormous impact for users particularly in certain areas. One example would be education, as the ministry interacts with a wide number of actors who are required to comply with a number of formalities, can access benefits, or need services. For example, lightening any burden that limits the ability to obtain a certificate would affect large numbers of people in society, e.g. students applying for certificates, for benefits, to universities.

Box 11.4. **A key player for interoperability: the Civil Registry**

The civil registry is another good example of an authority that has tried to improve its online channel focusing on increased interoperability to deliver better digital services. They have introduced a system to make online appointments for the 58 offices and many users are using it which has significantly reduced for them the waiting time.

In 2014, 18 000 000 certificates were delivered digitally against the 13 000 000 in 2013.

They are trying to increase the number of agreements ("convenios") to share directly information and data with a higher number of entities. They are considering a "framework agreement" to simplify this sharing of information. To increase efficiency they are also considering the introduction of "formality indexes" to eliminate unnecessary formalities. For the time being they are trying to eliminate certificates that are not necessary for instance. So that the organisation that consume the certificates will end up choosing to eliminate the step/need to request the certificate. The major resistance appears to be cultural – fear of changing how things are being done at the moment. The cultural change has to happen within the register and also in the agencies. Even though the civil registry serves mainly the citizens they also provide a good example of interagency co-operation with the BD, for example when the legal representative of a business has to obtain an e-ID for identification purposes.

Similarly to the existence of different levels of digital maturity in the public sector, gaps still exist in terms of e-readiness in society. In the case of public health, for instance, important challenges are still linked to some connectivity issues at rural level to be able to ensure the best use of technology. The technology available for the coverage is not the best quality. Improving connectivity across the country to enable accessibility to online services (through broadband or mobile) is essential to foster the interoperability and integration.

Box 11.5. **Spain: Cl@ve**

Cl@ve is the common platform of the Public Sector for the State Administrative for identification, authentication and electronic signature using concerted keys in Spain. Cl@ve was developed within the current legal framework established in the Council of Ministers Agreement to drive the Reform of the Spanish Public Administration, and as such it is one of the measures foreseen as part of CORA. Adopted through the Presidential order PRE /1838/2014 of 8 October 2014, Cl@ve is based on the DNI-e (electronic ID card) and electronic certificates, and offers the possibility of signing in the cloud with personal certificates kept in remote servers.

Cl@ve is part of the CORA's measures aimed to implement policies unifying, simplifying and streamlining organisations and services within the Spanish public administration. Specifically, it is part of the measures concerning IT infrastructure to drive the rationalisation of current infrastructures, a more efficient use of technological resources, and the development of services with higher levels of quality.

In this respect Cl@ve aims to unify existing online identification methods into a single solution, thus eliminating, absorbing or complementing various existing and at times incompatible identification systems, which had been deployed across different public administration organisations for a long time. Cl@ve is meant to make it more convenient for citizens to interact with public entities, whether municipal, regional or national, while at the same time simplifying identification systems and reducing maintenance needs.

The use of Cl@ve is mandatory for national online services, which will have to adopt Cl@ve before the end of 2015. Regional public administrations are being encouraged to adopt Cl@ve as their main identification framework so as to offer a unified system to all Spanish citizens across all online public services. The main target users are private citizens who need to identify themselves in order to interact with services on public administration websites. The value for the users will be derived by the increasing number of services that allow the citizens to use Cl@ve.

Source: OECD (2016), *OECD Public Governance Review of Spain*, OECD Publishing, Paris, forthcoming.

Increasing impact

Focusing on the further development of digital government that supports administrative simplification and improved service delivery requires investments and change management. This is why being capable of delivering and proving effect is essential. Being able to answer questions such as "why are we doing this?", "what are the gains?", "what are the benefits?" also implies mapping and understanding the needs of the end and intermediate users, the services an institution aims at providing in simpler and more accessible ways. The following sections provide some good examples of practices existing within the public sector in Chile that could be replicated or scaled-up to ensure greater integration across the administration.

The intermediate users: the Agencies

A number of evaluation and studies conducted in the frame of *Chile Atiende* show that users appreciate having "one single spot" where they can access services. However, as the level of user satisfaction increases the civil servants affected by the changes complain about the additional workload that comes through for them as a result of the implementation of the new system, e.g. they claim they have to be able to provide the service, deal with administrative issues while assisting users.

For instance, in 2013, important changes were enacted in the context of the Civil Registry including the development of new applications and many civil servants claimed to be unable to use them. They had the feeling that many systems were developed without their feedback and without the necessary capacities available, and they felt there had not been a dialogue between the civil servants and the decision-makers. In short, they wanted their capacity to be developed and they wanted to be able to make their contribution on how to best use technology to complete their tasks.

Since 2014 the IPS tried to take action to deal with the employees' dissatisfaction. In the various parts of the Institute working groups were organised to address specific problems involving the "intermediate" users of the new systems. Based on the requests and suggestions, the IPS changed the length of the working days, enabled the staff to choose whether or not to work on Saturday, redistributed the "workload", etc. This helped them recover some of the trust and support of the intermediate users (i.e. civil servants) to be able to install the new system in the most efficient way.

Consulting and involving the intermediate users to create users' success stories, and be able to depend on them as partners of change, is essential for successful implementation, as well as in building their capacities. To be effective, involvement should take place right from the beginning, while capacity-building has to happen when the system is actually deployed.

The provision of incentives for public institutions, including the capacity to prove the value derived from the introduction of any new system, is also important. In the PMG system used in the Chilean administration, institutions have goals in terms of performance linked to the provision of services. The Government could consider introducing goals linked to the dematerialisation, digitisation, administrative simplification or reduction of burdens to break down the resistance to change within single institutions responsible for taking all the steps required to integrate systems and operations in order to provide a single integrated service. Integrated service provision indeed requires change management, change of culture within the administration, new skills, and adaptation of individual institutions which may already have their own "branded" modernisation agencies, programme, etc.

Bringing the value to the local level

Things may get even more challenging at the municipalities' level. In the municipality of Maipú, the mayor's agenda includes commitments to public sector modernisation, as a compromise with the citizens: it foresees an improved use of ICTs to monitor changes in management, improve procedures, sensitise officials, etc. To make the commitment operational, a programme of coaching was started to preach the modernisation agenda, create relevant knowledge and awareness. They signed a number of agreements with CORFO, the University and SEGPRES to get support and capture the value of transferred knowledge. Internally, the administration started improving the

capacities of the personnel in management control. They have also a project management tool providing an overview of all existing projects and the level of their implementation, fed with information in real time.

The Municipality included the contribution from the Digital Municipality (*Municipio Digital)* programme into their modernisation agenda; so when they signed the agreement with the SEGPRES they were ready to identify the formalities that could be digitised: they revised the existing flux and the complete process to identify the improvements that could be made in terms of formalities and services, focused on simple services with high impact on the citizens, e.g. releasing the driving license.

What helped was the political support from the leadership to a citizen-centred approach, as well as the signing of agreements with the various institutions at the central level of government. This example is extremely good, and the key point is how to ensure that as the integration progresses the level of digital maturity of the various municipalities advances adequately. Having a ranking on the advancements of the digitisation process may help, as well as organising a yearly meeting of all municipalities to share knowledge and experiences, for instance within the framework of *Chile Atiende*.

Additionally, securing provision of clear direction on ICT strategic use in the country at municipal level would support the implementation of the broad agenda. At the moment, co-ordination of all digital government initiatives at local level – and with the central level of government – appears to be dispersed – and institutionally there are no CIOs at municipal level. The reality across the local government is very heterogeneous and many municipalities are not ready for, and do not have, a strategic use for ICTs. This situation has a negative effect on the results of the projects designed centrally but implemented throughout the country. Successful cases are in the minority. Improved and sounder digital government governance is required to support better alignment, synergetic partnerships among actors, and better co-ordination within and across levels of government.

The project *Municipios Digitales*, implemented by SEGRPRES, is a good practice to support the development of the necessary context at the municipal level (see box below).

Box 11.6. **Municipios Digitales**

The initiative *Municipios Digitales* (digital municipalities) focuses on the transfer of technology (e.g. through SIMPLE) and good practices to build awareness and capacities in order to facilitate standardisation of formalities at the local level. SEGPRES signed agreements ("convenios") with the municipalities so that when a formality or information is digitised it can be uploaded on the *Chile Atiende* platform. The approach has been so far to identify where advancements could be expected at the local in the middle and long term and to build capacities to identify the formalities to digitise. They started prioritising the mostly used; then the second set of services are those that imply a payment which means that are often more business related (these were identifies in connection with the BD).

The initiative looks at the service experience from the user's perspective. They have realised the need to standardise the formalities in all the "municipios", indicate on the webpage all the formalities to be digitised, and provide this information to the different municipalities. They are looking into prioritisation of services (e.g. certificate of good standing of social organisations) with the goal to help all municipalities (350) to develp technologically and be able to use technology to improve public management and fostering collaboration in particular with the smaller municipalities.

Final service users

The uptake of digital services by a critical mass of users is essential to deliver the value expected through programmes that aim at simplifying access to the administration and improve service provision through integration of services enabled by ICTs. For all those governments that choose not to embrace the "digital by default" approach, and do not make the use of the mandatory digital channels, it becomes essential to provide a convincing business case for the citizens to entice users to use the online channel.

Providing content and services that respond to the final users' needs is essential in order to attract them, and this requires knowing what the users need and want. The Ministry of Housing and Urbanism, for example, also manages subsidies for buying houses, investing house improvements, and in relation to these activities they run surveys among users to collect their feedback and preferences. The Ministry also uses social media platforms to collect opinions and gather statistics on users' satisfaction, identify negative experience to find solutions, etc.

Chile Atiende PYMES provides a very interesting example of the use of Google Analytics since 2013 to understand users' needs. *Chile Atiende* online also uses data analytics and runs surveys to understand the needs of users and public sector employees. In the context of the "paperless Chile" campaign, a button was included on website to enable users to express their preferences in terms of services they would like to see digitised.

However, efforts to consult and involve users need to be transparent and prove contribution to real participation and involvement. The risk otherwise is to have disillusioned users that feel that they are being asked their opinion without this translating into changes, which can create an substantial lack of trust.

The Internal Revenue Service also collects what the tax payer has to say. As for regulatory consultation, they are planning the development of a portal where the taxpayer can express comments on fiscal regulations. In relation to the formalities, they are creating areas for interaction and listening, for example on SM.

The Taxpayer Assistance Division (*Subdirección de Asistencia al Contribuyente*), in charge of user satisfaction, each year conducts a survey on the level of tax payers' satisfaction. It is charged with simplifying administrative procedures (e.g. the e-invoice) based on a user satisfaction approach. Similarly, the department that manages all digital formalities and the public consultation centre is responsible for running a survey once a year on users' satisfaction (of workers, employees and trade unions) which is combined with the information received in the physical offices. Every six months, the complaints received are passed to the actors responsible for the various formalities or services as contributions to improve relevant processes and procedures. Many complaints normally deal with the inadequate level of attention which is for instance an important input also relevant for the overall *Chile Atiende* initiative.

In a country like Chile, it is important to know the users, their needs and their preferences, in different parts of the country, to be able to design an adequate service provision strategy supported by digital government. The mechanisms to disseminate the new digital tools and how they will affect final users are indeed different.

The foregoing sections showed a considerable number of interesting practices already implemented that provide a significant starting point so that a move in this direction may be made. It would be of use if all these actors who are consulting the public and users of

services shared the interesting information they collected on the level of satisfaction, on users, etc. to support data analytics. To do so at the moment specific agreements (*convenios*) must be signed. The signing of a framework agreement (*convenio marco*) or, even better, some changes in the existing legal framework, to share information related to formalities others have digitised (for instance, to avoid mistakes that have already been made) would help move forward more rapidly with the overall efforts to modernise the public sector and foster administrative simplification. There is currently no co-ordination in this area and a stronger governance of digital government could certainly help improve sharing and collaboration in this regard.

Assessment and recommendations

The government of Chile should take steps to better align the digital government and administrative simplification agendas. Further progress in its evolution from e-government to digital government would support better alignment of key strategies, synergetic partnerships among actors, and better co-ordination within and across levels of government.

Chile has been making considerable efforts to increase the use of ICTs within the public sector to improve efficiency. Nevertheless, in many aspects, one can observe that the move from e-government to digital government has not really taken place, and that the strategy for ICTs' use in the public sector is not always integrated and aligned with other relevant agendas. In line with this overall finding, Digital Government is not sufficiently linked to the administrative simplification agenda, and the analysis of ongoing initiatives shows that often improvements in terms of administrative simplification occur as a secondary result of digital government projects.

This situation represents a missed opportunity to foster synergies between administrative simplification and digital government that share the same overarching goal of public sector modernisation. They both focus on making the everyday life of citizens and businesses easier, interactions with government for citizens and businesses more convenient and transparent, and access to the public administration and public services faster and cheaper. Both policy domains are expected to improve the competitiveness of the business sector, and to enhance the country' attractiveness to foreign investors. Furthermore they can both contribute to reinvigorating the trust of citizens in governance structures.

The fact that digital government co-ordination appears weak, and that there is no single entity officially responsible for setting the administrative simplification strategy and overseeing its implementation in Chile for the central administration, does not help. Co-ordination and alignment of objectives seem to happen but as a results of "good will" and not under an institutionalised clear governance framework with the right level of power, instruments and mandate. Weak co-ordination at the central government level can also have an impact at the local level, where municipalities may feel the lack of a clear communication on national strategic objectives to foster simpler administrations through ICTs.

Consequences of weak co-ordination appear to be:

- Inadequate enforcement of laws to foster the use of common enablers (e.g. law on interoperability framework, law on advanced digital signature) which are required for the delivery of integrated services that also simplify administrative processes.
- Duplication of efforts and expenditures (opportunity for shared services is not seized).
- Need for individual agreements to support collaboration and sharing across the administration. This creates the need for longer timeframes which undermines the whole idea of enabling more agile processes and interactions.
- Initiatives are not always linked in the most efficient way and they are often not linked to overall strategic vision and objectives.
- Missed opportunities for sharing data and strategically use data and evidence for planning, prioritising actions and monitoring impact and results.

The Chilean government has the capacities, and the required laws and regulations in place, to integrate the administrative and digital government agendas. What is missing is an institutionalisation of a method of working that could help using digital government projects to simplify the administration, e.g. reviews of formalities before they are digitised.

The sections below aim at recommending specific policy actions to help Chile leverage existing opportunities to link the digital government and administrative simplification agendas and processes more closely in order to provide better services and create a more accessible administration to its citizens and businesses.

Redesign the governance framework for digital government to improve co-ordination and collaboration in the design and implementation of strategies and initiatives for digital government and administrative simplification.

Clarify, strengthen and institutionalise the overall governance framework for digital government giving it a clear mandate, budget and focus, also in relation to administrative simplification. This also includes providing it with adequate enforcing powers (e.g. mandate to push for "*convenios marco*", to mandate the use of some digital enablers). This can help:

- Enabling a shift to a "*convenio marco*" (framework agreements) model that can help move towards a more rapid model of collaboration.
- Strengthening the focus on the service value chain.
- Providing a roadmap to include key actors in the digital government and administrative simplification processes.
- Improving interministerial co-ordination and collaboration to better link the administrative simplification and digital government.
- Creating awareness and incentives for the civil servants to focus on some horizontal strategies to bring together agendas, speed and timing of the different actors.

The government of Chile should leverage existing policy instruments to spur alignment between digital government and administrative simplification objectives.

Future plans and goals for Digital Government in Chile at the moment are a part of the national digital agenda. Although this serves the purpose of ensuring overall policy coherence, to be able to use the measures set in the "e-government chapter" of the national agenda as operational guidance its relevance as an independent Digital Government Strategy should be further clarified. It can indeed become a powerful policy instrument to link more closely investments on digital government to administrative simplification objectives.

At the moment there is no single administrative simplification agenda for the central administration in Chile. The Government could consider designing one, in conjunction, or as part of the digital government strategy.

Rely on champions that have been using ICTs also to simplify administrative processes and build on previous efforts to support co-ordinated strategies at the horizontal level. The civil registry for example is a key actor for the service provision agenda and gives examples of good practices (e.g. use of ICTs, awareness on the need to target administrative simplification objectives, involvement of civil servants to develop their capacities and create a sense of ownership of the new platforms and tools). This institution is highly utilised by the citizens and appears highly respected in the country and in the administration. The Ministry of Education can also be a key champion to help bridging various "agendas/files" and maximise the use of ICTs within the public sector.

Give further thought to the business processes inside the administration starting by giving priority to the financing of projects that support the development of standards so that the individual agencies/organisations platform can link up and as a result foster simpler administrative processes and integrated service delivery.

Use the Improvement Management Programme to include performance indicators in terms of efforts made in relation to dematerialisation, administrative simplification or reduction of burdens though the process of services digitisation.

Foster better integration between administrative simplification and digital government agendas through the implementation of existing individual initiatives and projects.

Give priority and leverage to the implementation of existing or planned initiatives that aim to foster interoperability of data, systems and processes to improve integrated service delivery also to simplify procedures and formalities. Implementation can indeed help to:

- Create a business case to link the two agendas.
- Detect the need to strengthen capacities to use ICTs to advance administrative simplification and not only pure technological skills
- Identify a political champion in using ICT to support the simplification agenda and start changing the behaviour within agencies
- Create network of people in the ministries that support the change.

- Ensure consistency, continuity and institutionalisation of efforts as the various projects are developed at the same time (e.g. *Escritorio Empresa*, *Chile Atiende*).
- Strengthen collaboration with banks and financial institutions
- Use the need to integrate all systems in one platform to improve co-ordination among the agencies that deliver the services (e.g. the further development of the Business Desk is a great example in this sense).

The government of Chile should involve stakeholders and adopt a user-driven approach to bring the administration closer to the users and to receive feedback in order to improve impact.

The government of Chile appears to have focused so far on administrative simplification from a service provider's perspective, e.g. looking at the formalities to simplify rather than paying attention to the needs of users. There are good examples to build on such as the one provided by the IRS, which targets simplification of formalities (e.g. e-invoice) from the citizens' perspective.

Outside the public sector, efforts can be placed on strengthening the focus on users; disseminating information to raise awareness on availability of services and on citizens' right to expect more efficient services, building capacities (e.g. using for dissemination the telecentres and bibliocentres) and involve users in agenda / strategy development. SMEs are an important example of users on which to place more focus and to further engage as they are important actors and users of services, which can contribute to national productivity and growth. It seems a priority should be to:

- build their ICT capacities
- improve their use of digital services (consider making it mandatory)
- engage with them to better understand their demands

Within the public sector: build capacities of leaders and civil servants also at the local level, transfer experiences among the local levels of government to generate a culture among civil servants as users of services with (e.g. with right expectations of more easily accessible and efficient services).

There are good practices on consulting users that at the moment are not optimised, but there is the need to co-ordinate the collection of data and information. Additionally, more sharing of these data and a more strategic use would also be a good opportunity to better engage the users. In this regard, it would help if all the actors who are consulting the public and engaging the users of shared data and information services (e.g. based on an agreement to use the same interoperability platform PISEE). This would support data analytics, identification of main needs and facilitate linking all the initiatives and actions undertaken at the moment by the individual actors to improve user's satisfaction.

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