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.

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