



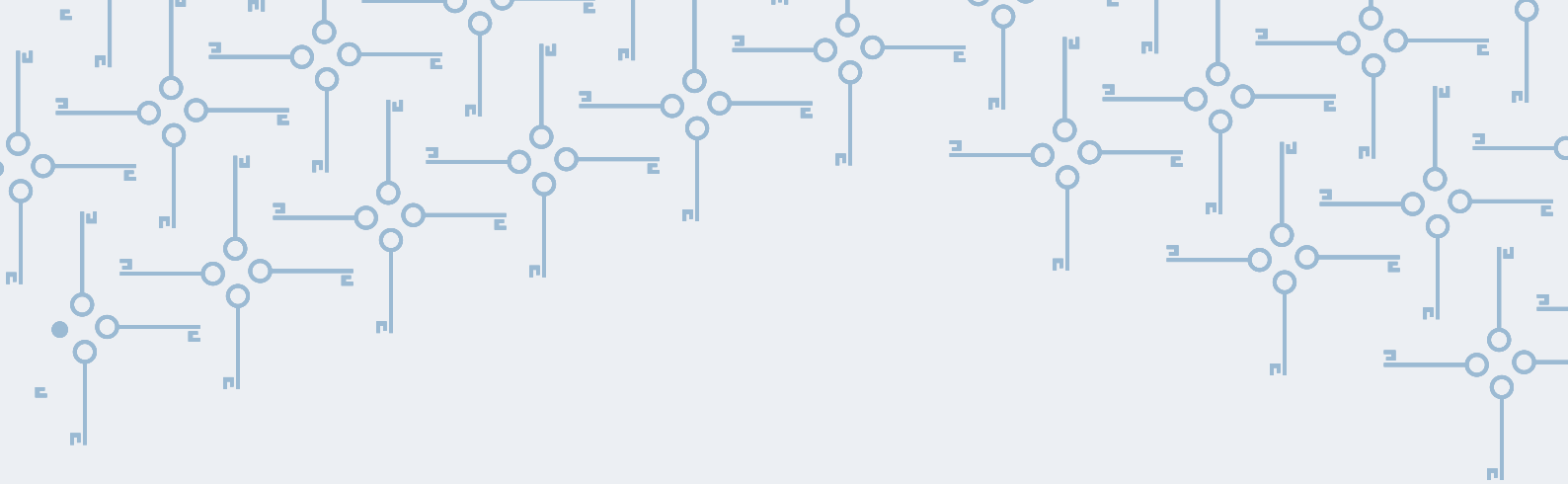
## **Opening Extractives**

Unlocking the benefits  
of ownership data

**Report**

# **Argentina: Scoping Study**

November 2022 (published in Spanish in March 2022)



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# Glossary

<b>AAIP</b>	Public Information Access Agency	<b>MSG</b>	Multi-Stakeholder Group
<b>AFIP</b>	Federal Administration of Public Revenues	<b>NCR</b>	National Corporate Registry
<b>AG</b>	Attorney General of the Nation	<b>OA</b>	Anticorruption Office
<b>AML/CFT</b>	Anti-money Laundering and Countering the Financing of Terrorism	<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>BCRA</b>	Central Bank of the Republic of Argentina	<b>OGP</b>	Open Government Partnership
<b>BO</b>	Beneficial ownership	<b>ONC</b>	National Contracting Office
<b>CAEM</b>	Argentine Chamber of Mining Operators	<b>OO</b>	Open Ownership
<b>CIMA</b>	Argentine Centre of Mining Information	<b>PEP</b>	Politically Exposed Person
<b>CL</b>	Corporate Law N° 19.550	<b>PROCELAC</b>	Office of the Prosecutor of Financial Crime and Money Laundering
<b>CNV</b>	National Securities Commission	<b>RBA</b>	Risk-Based Approach
<b>EITI</b>	Extractive Industries Transparency Initiative	<b>REI</b>	Register of Inactive Entities
<b>Extractive sector</b>	Mining and Hydrocarbons	<b>RITE</b>	Register of Company Integrity
<b>FIU</b>	Financial Intelligence Unit	<b>SSN</b>	Superintendency of Insurance of the Nation
<b>GAFI (FATF)</b>	Financial Action Task Force		
<b>GAFILAT</b>	Financial Action Task Force of Latin America		
<b>IAPG</b>	Argentine Institute of Petroleum and Gas		
<b>IGJ</b>	Inspector General of Justice		
<b>MPF</b>	Public Prosecutor's Office		

# Executive summary

This report analyses the legal and institutional aspects of the disclosure of beneficial ownership (hereinafter BO) in Argentina, taking into account compliance with Requirement 2.5 of the Standard approved by the Extractive Industries Transparency Initiative (EITI), of which Argentina has been a member since 2019. The requirement in question is chiefly based on the creation of a register accessible to the public of BO of corporate entities that acquire or have an interest in acquiring a license or contract for exploration or production of oil, gas or minerals, including the identity of its (their) beneficial owner(s), the degree of shares of ownership and details on how ownership or control is exercised.

The analysis is based on the global Opening Extractives programme, jointly led by EITI and Open Ownership (OO), which seeks to move towards beneficial ownership transparency in extractive industries, driving implementation of the reforms necessary to achieve it by making technical assistance, resources and institutional support available to implementing countries.

Initially recommendations and proposals are set forth that seek to offer alternatives for action to progress towards compliance with Requirement 2.5 of the EITI Standard concerning the oil, mining and gas industries, and eventually, in a scenario of maximum implementation, sketching guidelines for expansion to all other economic sectors.

It is important to point out that during the course of this study it was ascertained that the Registers of Mineral Investments, Petroleum Companies and operators of exempt fuels, or those with differential treatment due to geographical destination, are not included in the special registers for these activities that the Federal Administration of Public Revenues (AFIP) maintains. This finding should be a priority for corrective action, as this report will recommend and detail below.

For the drafting of this report, a survey was taken of the national and provincial regulatory framework, eight semi-structured interviews of key actors were conducted, and systematic dialogues were undertaken with the Open Ownership team to provide follow-up on the study. A map was drawn up of the key actors in the decision-making process, including their interactions, resources, interests, incentives and influences.

# Overview of recommendations

The recommendations are based on the analysis of the Open Ownership Principles (“the OO Principles”) which are reference criteria for the effective disclosure of data on beneficial ownership, and have been formulated taking into account the technical characteristics of effective BO transparency regimes and not factors external to these such as political, social economic or cultural factors.

These Principles seek to be a tool for assisting governments, international institutions, civil society and private sector actors to understand, promote and implement effective reforms on beneficial ownership. It is a matter of providing a framework of good practices for application of transparency of real ownership of companies, based on reliable data.

The OO Principles are as follows:

- 1. Robust definition:** There must be clear and robust definitions of beneficial ownership in the law and low thresholds to determine when ownership and control are to be disclosed.
- 2. Comprehensive coverage:** Data should comprehensively encompass all relevant types of legal and natural persons.
- 3. Sufficient detail:** BO disclosures should include enough information so that users can understand and use the data.
- 4. A central register:** The data should be compiled in a central register.
- 5. Public access to a central register:** The data should be available to the public.
- 6. Structured data:** The data should be structured and interoperable.
- 7. Verification:** Measures should be taken to verify the data.
- 8. Up-to-date and auditable:** Data should be kept up-to-date and stored in historical registers.
- 9. Sanctions and enforcement:** Adequate sanctions should exist and be applied for cases of non-compliance.

## Robust definition

- 1.** Argentina should have a substantive law establishing a single definition of beneficial ownership for all economic sectors, including extractive industries, to harmonise the existing regulations, setting a single threshold encompassing all possible legal structures.
- 2.** As for the dictates of the law, they should encompass not only technical questions but also practical situations. To this end, it is recommended that this definition be proposed by the Advisory Council of Law N° 25.246, of which the Financial Intelligence Unit (FIU) is a part. In the future, it is recommended that the FIU itself should be able to modify and/or adapt the definition, based on a proposal drawn up by the Advisory Council.
- 3.** As long as there is no substantive law, it is recommended to proceed with a pilot trial with the extractive industries. This trial would be based on the definition of the Inspector General of Justice (IGJ), adopted in turn by the EITI Multi-Stakeholder Group (MSG) (which, in turn, reflects the rules of the FIU).

## Comprehensive coverage

- 4.** With regard to the extractive sectors, in the framework of a pilot trial, the National Mining and Hydrocarbons authorities should modify requirements for registration in the Register of Mining and Hydrocarbons at the federal level, incorporating Resolution N° 30/2018 of the Secretary of Mining and Provision N° 337/2019 of the Subsecretary of Hydrocarbons and Fuels that as a condition of access and permanence, registered or interested parties must prove that they have complied in providing BO data in accordance with the definition adopted by the MSG, without exception.
- 5.** For other sectors of the economy, Argentina should have a law that streamlines the criteria of the different public agencies, especially among FIUs and AFIP.

6. For the pilot trial, participation is recommended by some of the provincial entities that belong to EITI and/or those provinces where companies in the mining, gas and oil sector that have been included in EITI operate. In a medium- to long-term scenario, the registers of provincial permits and concessions should be included. It is recommended to address the issue in the setting of the Federal Mining Council and the Federal Hydrocarbons Council, where the provinces are politically represented.

## Sufficient detail

7. Currently, it is possible to proceed with the pilot trial in the extractive industries implementing the obligation to require information on beneficial ownership as a condition for registering in the registers of mining and hydrocarbons (see Point 4 of the Overview of Recommendations). In order to have compliance in a simple and immediate form, and until there are other overriding mechanisms, companies should present to the authorities of Mining and Hydrocarbons a sworn statement that they have filed with the IGJ (with headquarters in the Autonomous City of Buenos Aires) or a sworn statement on beneficial ownership that they have filed with the AFIP, as the case may be.
8. To enhance compliance with this principle, on the IGJ declaration form, they should fill out other fields that increase the level of detail in the data on ultimate beneficial owners, the entities in question, and above all, what are the means through which the property is maintained or control is exercised.
9. To proceed gradually with data interoperability, the BO information should be included as an additional field in the National Corporate Registry (NCR) making it possible for both the general public as well as the competent agencies to search them online (including the provinces). The agencies, in turn, would be able to verify data faster without the need to require companies to do what is indicated in Point 7.

## Central register

10. In the pilot trial, in the rules on mining and hydrocarbons, the following should be required: Prove that the BO information is filed with the respective company register based on registration (the IGJ or those provinces that have incorporated beneficial ownership transparency as a requirement) or provide the sworn statements filed with AFIP where the BO data is supplied, as the case may be.

In parallel, with the advance of the pilot trial, centralisation in the NCR of BO data for the extractive sector should be sought. In this way, it would be the only centralised data source at the federal level.

11. The evolution of the pilot trial and its results should be taken into account to remove obstacles in keeping with the dictates of a substantive law applicable to all sectors.

## Public access to a central register

12. In the first phase, the execution of the pilot trial with the extractive industries will make it possible to proceed with the information of parties interested in registering and/or those who have already registered in the special registers for mining and hydrocarbons. These registers, by their nature, are public and freely accessible for public consultation, although currently they are not available online. In the pilot trial – until better arrangements are in place – data may be published on the websites of the enforcement authorities as open data.
13. Gradually, data centralisation should proceed at the NCR since company records are public, and subject to public access, pursuant to the legislation in force in Argentina (Article 3 of Law N° 26.047 and 9 of Law N° 19.550). The information should be accessible online for agencies in accordance with their competencies, and for the general public, in accordance with the legal conditions that allow it. This application should be tested as the pilot trial goes forward.
14. In a scenario of maximum application, a substantive law applicable to all sectors should include purposes, causes, mechanisms, opportunities and ways of instrumentalizing the disclosure of BO data. In particular, exceptions for fiscal secrecy should be included, among other matters.

## Structured data

15. Data to be published should be available in a structured and interoperable format. In the development of the BO register, it is recommended to adopt the specific guidance in [Relational database design considerations for beneficial ownership information](#), which focuses on requirements for the publication of data to comply with the [Beneficial Ownership Data Standard \(BODS\)](#).

## Verification

16. Systems should be established that guarantee that data is reliable, and they should include: a) automatic validation in authentication and loading processes that neutralise incorrect data and do not allow it to load; b) the possibility of reporting errors and inconsistencies by the general public as long as whoever is making a report has legally obtained the information that they are using to make the correction, and c) automatic verification and/or cross checking of data between agencies.

## Up to date and auditable

17. In the pilot trial a modification of criteria for updating the regulations in force concerning regimes for extractive industries should be included. At present changes have to be reported annually. Nevertheless, in light of the possibility of changes occurring more frequently, it is recommended to amend the regulation to establish that all changes should be reported on the fifteenth day (or similar interval) after they have taken place. And accordingly, compliance should be strictly enforced.
18. If a substantive law is promulgated, it should include a uniform manner of updating BO information, and consistent frequency for all agencies concerned.

## Sanctions and enforcement

19. In amending the rules for requiring BO disclosure in the pilot trial, it is recommended to include a restriction on appearing in Registers and the use of benefits available therein for anyone who fails to comply with the requirement to report BO information.
20. It is recommended to publish a list of those who fail to comply with disclosure regimes, and to work in coordination with other agencies to keep information up-to-date.
21. In the event that a substantive law is promulgated, specific sanctions should be established, whose enforcement must then be coordinated with the Judicial Branch and the Public Prosecutor's Office.

# Methodology and structure of the report

In 2019, Argentina's entry into the Extractive Industries Transparency Initiative (EITI) constituted a step forward in terms of rendering transparent the information and data of the industry, indicated by the Organisation for Economic Co-operation and Development<sup>1</sup> – OECD – as the industry most likely to engage in the crime of bribery of public officials. This impulse was also echoed in the Open Government Partnership<sup>2</sup> (OGP), of which Argentina has been a member since 2012, which included transparency of the extractive industries in its Fourth Action Plan.<sup>3</sup>

This report will explain the institutional rules applicable to beneficial ownership transparency that exist in Argentina, using a qualitative analytical focus: obstacles, strengths and opportunities for improvement, encompassing general and transverse rules as well as specific rules for extractive industries. The compilation of the regulatory framework that may directly or indirectly have a bearing on the problem in question is supplemented by the inclusion of available documents, reports and publications.

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1 OECD (2014), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264226616-en>.

2 OGP is a multilateral initiative which seeks to ensure solid commitments on the part of governments to promote transparency, fight corruption and improve public services. Argentina has been a member of the OGP since 2012.

3 "Cuarto Plan de Acción Nacional de Gobierno Abierto 2019-2021 Argentina," Dirección de Gobierno Abierto, OGP, Secretaría de Modernización – Presidencia de la Nación, y Subsecretaría de Innovación Pública y Gobierno Abierto, 2019, [https://www.argentina.gob.ar/sites/default/files/cuarto\\_plan\\_de\\_accion\\_nacional\\_de\\_gobierno\\_abierto\\_-\\_argentina\\_-\\_v4.pdf](https://www.argentina.gob.ar/sites/default/files/cuarto_plan_de_accion_nacional_de_gobierno_abierto_-_argentina_-_v4.pdf).



# Beneficial Ownership Regime in Argentina

## Robust definition

### OO Principle

There ought to be clear and robust definitions of beneficial ownership in the law, as well as low thresholds for determining when ownership and control are to be disclosed.

- The robust and clear definitions should indicate that a beneficial owner is a natural person.
- All forms of ownership and control should be covered, and the definition should specify that ownership and control may be held directly and indirectly.
- There should be a single definition in primary legislation, with secondary legislation that regulates this definition.
- The thresholds should be sufficiently low so as to ensure disclosure of all relevant forms of ownership and control, and a risk-based approach should be used to establish such lower thresholds for particular sectors.
- Special attention should be paid to the thresholds that are applied to ownership by Politically Exposed Persons (PEPs), with a clear definition used to determine what constitutes a PEP.

### In-country evaluation

The FIU handed down Resolution N° 112/2021 establishing a definition of Ultimate Beneficial Owners and the due diligence that Obligated Entities, considered in Article 20 of Law N° 25.246 as amended, must fulfil for its actual identification. This definition includes a threshold of 10% for declaration as an ultimate beneficial owner, and is aligned with the Open Ownership Principles.

In a complementary fashion, FIU Resolution N° 134/2018 establishes which persons are considered PEPs. Certain obliged entities must conduct a Risk-Based Approach (RBA) and declare whether their beneficial owner(s) is a PEP, in terms of the characteristics of operations and other factors.

Due to the fact that different public institutions such as the IGJ, the National Securities Commission (CNV), the Superintendency of Insurance of the Nation (SSN) and the Central Bank of the Republic of Argentina (BCRA) are Obligated Entities before the FIU, to comply with their legal obligation they must adjust their regulations to FIU criteria, and accordingly require this information of their clients.

The AFIP itself is also an Obligated Entity before the FIU, though its definition (as established in General Resolution N° 4697/20, as amended) is not the same. The AFIP has a broader definition given that it calls for the declaration of the beneficial ownership of an entity “regardless of the percentage of their participation.”

In this principle, it is important to consider the difference in criteria between the FIU and the AFIP, insofar as the former sets a threshold of 10% and the latter sets no threshold at all (except in the case of a publicly listed company, for which it sets a threshold of 2%). Coverage by the IGJ in adopting FIU criteria in its regulations will have this same scope. The CNV, for its part, also issued regulations in accordance with FIU guidelines for its scope of competency.

There is no substantive law that establishes a single definition of Beneficial Ownership in Argentina for any economic sector.

The existing regulations are dispersed and very complex, practically the domain of specialists. This could make compliance with the EITI standard difficult. In particular, it gives rise to confusion and/or a superficial knowledge for most members of the MSG. Furthermore, none of the agencies that issued regulations concerning a definition or that have the legal competency are members of EITI's MSG,<sup>4</sup> and that could weaken the drive towards a general measure to facilitate compliance with the Standard, considering that the leadership is likely to devolve to those agencies for which the initiative is not necessarily a priority. It was possible to corroborate this in the interviews that were held, in which the agencies that are not members of EITI's MSG stated that they are not considering special measures for particular sectors, but rather general ones for the whole economy.<sup>5</sup>

On the other hand, it makes coordination difficult between and within federal public agencies, and with respect to local estates, which makes it easier for the issue of beneficial ownership to remain outside the agenda of most of the provincial governments, which are the ones that generally have the authority to issue licenses and permits to the extractive industries. As an exception to this, the Autonomous City of Buenos Aires,

the province of Buenos Aires, Tierra del Fuego and Córdoba include in their regulations the obligation to report BO data to the authorities of the public corporate registers.

From the interviews conducted with key actors, a general agreement was observed in the need to have a single definition by law between the public sector and civil society. Discrepancies arose among the actors in connection with the different definitions adopted, specifically among public sector actors because of their competencies. The FIU emphasised that its competency had to prevail when it comes to the question of who defines the terms, considering the ultimate aim of seeking to obscure BO information (independent of the Financial Action Task Force (FATF) recommendations). The AFIP, however, stressed that its definition fulfils the purposes for which it was promulgated, which has to do with competency in tax matters.

As for the private sector, not all actors were in agreement on the need to have a single definition at the legal level. The Argentine Chamber of Mining Operators (CAEM) stated that what has already been regulated by AFIP was sufficient, without noting that the definition adopted by the SMG was that of the IGJ which is adjusted to that of the FIU.

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## Recommendations

It should be clarified that although this effort has to do with extractive industries, Argentina should have a single legal definition of ultimate beneficial owners for all economic sectors that include them, that sets a threshold<sup>6</sup> and covers all possible legal structures.<sup>7</sup> To achieve this, it is necessary to have a law of the Congress of the Nation insofar as it involves a substantive issue, which could be a special law, solely regulating everything having to do with beneficial ownership, or a law Corporate Law (CL) N° 19.550 or Law N° 26.047 of the

National Corporate Register, of the National Registers of Foreign Companies and Civil and Foundations and the National Corporate Register of Non-Equity Partnerships. As for a definition in national law, considering that it is a substantive matter, it would apply to the provinces without requiring their express adherence. The same is not the case for the issue of registration, as we shall see in the OO Principles: A Central Register does require adherence.

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4 Only AFIP was called upon to take part in the GTT (Grupo de Trabajo de Aspectos Tributarios - 'Working Group on Tax Issues') without confirming a representative for said group. It is not a member of the MSG.

5 This difficulty in obtaining information or corroborating it with other public agencies that are not members of EITI is somewhat generalised, applicable to various points in the standard, and is a constant for the MSG. It can be seen in the Scoping Report, Materiality and Systematic Disclosure (see, for example, page 28 at [https://www.argentina.gob.ar/sites/default/files/informe\\_de\\_alcance\\_materialidad\\_y\\_divulgacion\\_sistematica\\_0.pdf](https://www.argentina.gob.ar/sites/default/files/informe_de_alcance_materialidad_y_divulgacion_sistematica_0.pdf))

6 It could be considered 10% as defined by the FIU in Resolution N° 112/21, adjusting to GAFI recommendations and also because the regulated entities had been using this threshold.

7 It is possible for it to include a generic and comprehensive key, which is present in a number of Argentine regulations, for example: "and any vehicle, structure or figure."

At the same time, in order for the law not only to consider technical issues but also practical situations, it could be found that this definition should be proposed by the Advisory Council<sup>8</sup> of Law N° 25.246 of which the FIU is a member, because that is where most of the agencies with influence and interest in the matter are found. It might also be included in the draft law that in the future it should be the FIU that is able to amend and/or adapt the definition, based on a proposal drawn up by the Advisory Council.

Until then, it is recommended to proceed with a pilot trial with the extractive industries since EITI's MSG has adopted as its definition the one established by the IGJ which, in principle, would be in accordance with the OO Principle reviewed in this section. Because of this, the enforcement authorities for mining and hydrocarbons should amend regulations as recommended in the Report on Scope, Materiality and Systematic Disclosure,<sup>9</sup> including the obligation to report beneficial ownership of extractive companies, following the definition already adopted by EITI.

In the framework of the pilot trial, and without Mining and Hydrocarbons hindering its advance, it is recommended to continue working and strengthening bonds of cooperation with other agencies (AFIP, the UIF, the IGJ, and the Ministry of Justice and Human Rights). The strengthening of coordination relationships will gradually make it possible to forge links of trust among the actors involved, and to move towards the centralisation of data in the NCR, verifying its practical functioning, detecting opportunities for improvement at the operational level, and subsequently, extending to other economic sectors.

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**8** Article 8 of Law N° 25.246 establishes that the FIU will be made up of one (1) President, one (1) Vice President and one **Advisory Council** of seven (7) Members. The size of this council is determined by the actors whose representation is set as follows: A representative official of the Central Bank of the Argentine Republic; one from the Federal Administration of Public Revenues; one from the National Securities Commission; one from the Ministry of Justice and Human Rights; one from the Ministry of Finance, one from the Ministry of the Interior, as well as an expert in money laundering from the Secretary of Programming for the Prevention of Drug Addiction and Control of Drug Trafficking of the Office of the Presidency.

The members of the Advisory Council are appointed by the National Executive Branch at the proposal of the heads of each one of the agencies they represent. The horizontal and contingent collaborative function held by the FIU interacting with other jurisdictions of the National Government has to do with the complex nature of the crimes and conduct that fall within its jurisdiction.

The Advisory Council assumes a need for coordination with Public Sector actors that, beyond the status of some as Obligated Entities, undertake necessary interventions in the tasks carried forward by the FIU.

**9** Pages 41 and 97

# Comprehensive coverage

## OO Principle

The disclosure of BO data should exhaustively encompass all types of legal and natural persons.

- All types of entities and agreements through which a natural person can exercise ownership and control should be included in the declarations.
- Special attention should be paid to disclosure requirements for entities such as state-owned enterprises and publicly listed companies. All natural persons including non-residents and foreigners should be included in declarations.
- Any exemption from the requirements of complete disclosure must be defined clearly, be justified, and be reassessed on an ongoing basis.

## In-country evaluation

In the various regulatory arrangements in force in Argentina there is included a generic formula that refers to “any other legal structure” or “any other form of control,”<sup>10</sup> and this allows for a broader margin of action to be able to address and analyse cases. It is also a challenge for governmental authorities since it calls for constant engagement in oversight and technical analysis of case materials, which must follow (or attempt to follow) the dynamics of commercial structures. Nevertheless, the lack of coordination to share information and the impossibility of access to data makes it challenging to exchange experience and knowledge among public agencies.

With regard to exemptions for declaring beneficial ownership, Argentine regulations in general (except those of the AFIP) exempt companies that make public offerings of their assets on condition that they identify the way through which such information can be accessed. This presupposes that the information will be public and accessible but that is not always the case. In many cases, a special authentication process is required for the portal that publishes the material; the information is in formats that are not compatible with those used by government entities; and reverses the burden of the declaration, since the agency is supposed to verify that the information published on exchanges or securities markets is actually accessible and sufficient. This point was touched upon by the AFIP during the interview, explaining why this agency does not make an exception for this kind of subject, and in general stressing that if they did exempt them, the agency’s controls would be practically impossible since the different formats in which they are published do not allow for matching up this information with their databases. In this same sense, if one were to think of a hypothesis where in the chain of ownership one arrived at a company which was excepted from having to declare, it would seriously hinder traceability and access to the information.

It should be noted that in the [First Cycle of Reporting of EITI Argentina for the year 2018](#) (pages 57, 58, 59, 77, 78, 79 and 80) and [Second Cycle of Reporting of EITI Argentina for the year 2019](#) (69, 70, 98, 99 and 100), it turns out that only two companies in the mining sector have complied with Requirement 2.5 of the Standard for reporting beneficial ownership, as per the definition adopted by the MSG.

## Recommendations

In line with the recommendation made in the previous OO Principle on the pilot trial, to move ahead with compliance with Requirement 2.5 of the EITI standard, the authorities of National Mining and Hydrocarbons should amend the requirements for registering in the Registers of Mining and Hydrocarbons at the federal

level, incorporating Resolution N° 30/2018 of the Secretary of Mining, and Provision N° 337/2019 of the Under Secretary of Hydrocarbons and Fuels, that as a condition for access and maintaining registration, interested parties must prove that they complied by reporting BO data in accordance with the definition of

<sup>10</sup> AFIP General Resolution N° 3572/2013 created the “Register of Linked Subjects,” in which tax payers and/or responsible residents in the country must register whose profits fall within the third category, pursuant to what is established by the Law on Taxation and Profits, and having a link with any subject established, domiciled, based or located in the Republic of Argentina or abroad. An interesting point of this resolution – although it goes beyond the scope of this study because it encompasses all economic sectors – is that it establishes assumptions on the basis of which regulations take as given the link between subjects and can serve as a pattern for addressing the figure of the ultimate beneficial owner. For example: a subject possesses all or a majority share of the capital of another; alternatively, two or more subjects have: a) One subject in common as full owner or majority shareholder of their capital; b) A subject in common who possesses all or a majority share of the capital of one or more subjects and significant influence on one or more of the other subjects; c) A subject in common who has significant influence on them both simultaneously; d) A subject has the necessary votes to shape the company will or prevail in the shareholders assembly or with the partners of the other; two or more subjects have directors, employees or administrators in common.

beneficial ownership, without any exceptions. To do this in practice there are a number of different alternatives (as long as there is a field for beneficial ownership in the domain of the NCR, or another central register required by Law):

- To submit their information through a specific form made available by the authorities of Mining and Hydrocarbons;
- To prove that BO information has been provided to the corporate registry to which it belongs by registration (for the IGJ or those provinces that have included beneficial ownership transparency as a requirement); or
- To present the Sworn Statements filed with the AFIP in which ultimate beneficial owners are reported, if the foregoing scenario does not apply.

In this last regard, continuing with the idea of orchestrating the pilot trial, the last paragraph of Article 101 of Law N° 11.683<sup>11</sup> applies, which establishes that taxpayers and managers are owners of their data, and ultimately, they can share their fiscal, corporate, financial or any other kind of information with whom-ever they may choose. This, in turn, is consistent with the AFIP criterion adopted in a recent resolution that adjusted the criterion reasonably and expressly allows the possibility of taxpayers and managers sharing their sworn statements and documentation with third parties at will and for their own benefit.<sup>12</sup>

This point is essential: given that mining and hydrocarbons are voluntary regimes (companies opt to accept tax benefits and/or obtain permits and concessions in the federal domain), the State is able to include conditions for access. Therefore, in amending the ministerial regulations mentioned above, companies that wish to have access to permits, benefits and tax exemptions should comply with declaring their ultimate beneficial owners in addition to any other documentation that is currently requested of them.

As some province(s) join the pilot trial, it is recommended to proceed gradually in the centralisation of NCR information so that it will have the data from public registries of provincial companies. In this way, company (not tax) information, including that regarding beneficial ownership, will form part of the company record that is administered by the National Corporate Registry (which due to Article 9 of Law N° 19.550 is open to public

consultation for business partnerships) and should be accessible as other corporate data of the IGJ is today for subjects registered in the Autonomous City of Buenos Aires.

It should be noted that even if the Nation does move forward with the pilot trial, it would cover corporate and tax information but will not link to the registries of permits and concessions held by each province that are not digitised or accessible online. Because of this, the participation of certain provinces should be brought about gradually at least for the pilot trial, beginning with the provinces that are expected to join EITI. In a medium- to long-term scenario, the matter can be explored in greater depth in the setting of the Federal Mining Council and the Federal Hydrocarbon Council, where the provinces are politically represented.

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11 "... The Federal Administration of Public Revenues will work out the means to enable taxpayers and managers, through the agency platform and using their fiscal code, to share their determinative sworn statements and own documentation with third parties that have been submitted by them through this means. The collecting agency will not be liable in any way for consequences that the transmission of such information may cause, nor will it under any circumstances affirm its veracity."

12 General Resolution N° 5125/2021 was promulgated, which superseded General Resolution N° 3.952 establishing that Obligated Entities before the FIU had to abstain from requiring of their clients the sworn statements on national taxes that they file with the AFIP since – pursuant to the now-superseded rule – it would avoid violating Fiscal Secrecy if this information were disclosed.

# Sufficient detail

## OO Principle

BO declarations should bring together sufficient detail to enable users to understand and use the data.

- Sufficient key information should be compiled to identify the ultimate beneficial owner, the declaring entity and the means through which the ownership or control is held.
- To facilitate compliance, the information should be compiled using online declaration forms, which should be accompanied by clear instructions on how to fill out the form.
- Clear identifiers should be assigned to natural persons, legal entities and mechanisms for facilitating data use and analysis.
- When an ultimate beneficial owner is indirectly linked through multiple entities, sufficient information should be published to clarify the complete chain of ownership.

## In-country evaluation

It is not possible to analyse this principle in view of the small amount of information available on the matter and the impossibility of accessing a sample of the closed registers to analyse the registered information.

Both the IGJ as well as the NCR publish a set of public data, but their information is very limited and does not have data on beneficial ownership. The basic data for legal persons in the National Corporate Registry is available for public consultation free of charge at: <http://datos.jus.gob.ar/dataset/registro-nacional-de-sociedades>. It is noted that the source of this data is the Federal Register of Legal Persons of the AFIP provided to the Ministry of Justice and Human Rights within the framework of the Collaboration Agreement signed for the joint implementation of Law 26.047 which creates the National Corporate Registry, as called for by Article 8 of Law 19.550.

For its part, the IGJ has made available at the same portal the link: <http://datos.jus.gob.ar/dataset/entidades-constituidas-en-la-inspeccion-general-de-justicia-igj/archivo/dc840e68-86fc-405f-87b6-904d292891ff> which shows the full names and National Identity Documents of the officials or partners of entities registered there, but does not show the information linked to companies and/or involved structures.

We understand that, as occurs with provincial registers, the IGJ does not share its information with the NCR, since it is not cited as a source in the portal and, unlike what happens in practice, as per Law N° 26.047 it is the NCR that is supposed to centralise the country's information.

Most of Argentina's provinces, in turn, maintain corporate registries that are not digitised, nor are they accessible or integrated. Accordingly, it is not possible to learn about existing information or assess the degree of difficulty that an integration would entail.

The datasets published are very limited, not widely disseminated, fragmented and difficult to access.

Just as access is difficult even for government officials, loading information is not simple since there are a variety of regulatory schemes, and subjects are required to report the same information to various government venues with different levels of detail. In this order, centralisation would entail an unquestionable advantage in the cost savings from compliance.

Even when they deal with different subjects (relating to taxes, currency exchange, the securities market and personal data), the laws bearing on data disclosure, in having the same hierarchy but a different scope of application, work against each other, which gives rise to impediments to data disclosure.

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## Recommendations

Faced with the current scenario of the lack of a substantive law to streamline criteria and data to be collected on beneficial ownership, in the framework of the pilot trial for extractive industries two lines of action are recommended. The first, in the short term, is to move forward with existing information, as indicated, taking declarations on beneficial ownership filed with the IGJ and/or with the AFIP, as the case may be.



The second, in the medium term, is to start to work on the design of a uniform register containing all necessary data and at a second stage, to incorporate such data into the NCR, allowing for its online consultation both for the general public as well as the competent agencies (including any provinces that may be participating). The agencies in turn would be able to verify the data in accordance with their functions.<sup>13</sup>

## Central register

### OO Principle

BO data should be compiled in a central register.

### In-country evaluation

In Argentina to date there is no single BO register, although the information exists and is on file with certain national agencies. Nor is there a single authority in charge of this matter.

As far as extractive industries are concerned, at the national level, there are special registers directly linked to the conduct of activities and/or to obtaining national tax benefits. However, to date, these registers have not yet incorporated the reporting of BO data as a requirement in their regulations.

The National Register of Hydrocarbon Investment was created within the framework of the Investment Promotion Scheme for the Exploitation of Hydrocarbons. In the register, any owners of hydrocarbon exploration permits and/or exploitation concessions granted by the National State, the provinces or the Autonomous City of Buenos Aires, as well as third parties associated with such owners, must be registered.

Furthermore, there is a Register of Petroleum Companies under the auspices of the Under Secretary of Hydrocarbons and Fuels, which is applicable to Producing Companies.

As for mining, at the national level, there is the Investment Scheme for Mining Activities whose Enforcement Authority is the National Secretariat of Mining. This is an incentive system which grants tax benefits intended to foster the development of mining in the country, and which stipulates that interested parties must register in the Registry of Mining Investments.

On the other hand, in 2014 the AFIP set up a Tax Registry of Mining Companies<sup>14</sup> which, as well as being a special withholding system, also establishes a system for information that includes “*natural persons, undivided estates, single-person companies or exploitation operations, partnerships, associations and any other legal entities engaged in mining activities and performing operations of prospecting, exploration, exploitation, development, preparation and extraction of mineral substances (...)*”

Registration in the Register will be required in order to process the benefits established in Law No 24.196 of Mining Investments in the AFIP, as amended. Registration is also required for executing calculations in the respective sworn statements of taxes whose enforcement and collection fall under the responsibility of AFIP. However, to date, these registers have not yet incorporated the reporting of BO data as a requirement in their regulations.

As for hydrocarbon activities, AFIP has implemented the “Regime for operators of fuels that are exempt and/or subject to differential treatment due to geographical destination”.<sup>15</sup>

In none of the special registers does AFIP specifically require declaration of the beneficial owner.

<sup>13</sup> It should be noted that among its requirements, Provision N° 337/2019 of the Under Secretary of Hydrocarbons and Fuels calls for the filing of Sworn Statements on the Tax on Profits.

<sup>14</sup> This regime excludes from its scope of application companies engaging in activities linked to liquid and gaseous hydrocarbons. General Resolution N° 3692/2014

<sup>15</sup> General Resolution N° 4772/2020

With regard to the corporate sector, the National Corporate Registry (NCR) applicable to all sectors of the economy, and not only the extractive industries, is a step forward at the federal level in terms of centralisation of registers. This is because as per the law which mandates the creation of the register, the provinces and the Autonomous City of Buenos Aires are supposed to send all information to this register, although in practice this does not occur.

With regard to the provinces, only four of them have stipulated requirements to include beneficial ownership data in their Registers of Juridical Persons: The Autonomous City of Buenos Aires, the Province of Buenos Aires, Córdoba and Tierra del Fuego.

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## Recommendations

We recommend that mining and hydrocarbon authority regulations should be amended at the national level, so that it is a condition to access and remain in force in the extractive registers.

In tandem with this and within the framework of the pilot trial, as stated in the Comprehensive coverage Principle, with regards to extractive industries, the process may progress on two parallel paths that make it possible to move towards compliance with Requirement 2.5 of the EITI Standard:

1. The amendment of mining and hydrocarbon regulations in question should require the following:
  - To prove that BO information has been filed with the appropriate corporate register based on where it has been registered (with the IGJ or with those provinces that have stipulated requirements for information on beneficial ownership);
  - If the foregoing is not applicable, to submit the sworn statements filed with AFIP in which beneficial ownership is reported.
2. Proceed gradually with centralisation of BO data for the extractive sector in the NCR. It should be noted that the NCR must be the register that receives this information considering that pursuant to its own organic law that is where all registration information should be kept.

This gradual path will serve to expedite certain practical, operational and technological issues and, as already noted, strengthen bonds of trust between the different actors, attenuating disagreements and assessing outcomes.

Nevertheless, we acknowledge that setting up this arrangement does require major political will expressed by someone who can provide leadership on the matter so that it becomes a matter of priority on the agendas of agencies such as AFIP, the IGJ and the Ministry of Justice, among others, who are not currently part of the EITI MSG.

Nor should we overlook the fact that the same political will must be exercised to get the provinces to participate in the extractive industries pilot trial, sharing information and adapting to an initial centralisation scheme.

The success of a pilot trial for the extractive industries could be a key driver towards the best-case scenario, which involves a primary law to regulate the matter for all sectors in general, including the extractive sectors.



# Public access

## OO Principle

Sufficient data should be freely accessible to the public.

- OE data in the central registry should be accessible to the public without barriers such as tariffs or fees.
- Data made available to the public should be sufficient so that users can understand it and make use of it.
- When information on certain categories of persons (for example, minors) or entities is exempt from publication, the exemption should be clearly defined and justified.
- When data has been exempted from publication, the data available to the public should indicate that the information of the beneficial owner is held by the authorities, but that it has been exempted from publication.

## In-country evaluation

Although the **Law of Access to Public Information (LAIP)** establishes that transparency ought to be the rule, and exceptions are only to be applied sparingly and with good reason, conflicts among the various laws and, in particular, fiscal secrecy have been the primary obstacle to public availability of BO data on file at the competent agencies up to now.

In general, the companies that make their assets publicly available are exempt from the requirement to report their beneficial owners according to the regulations reviewed. Furthermore, the Law of Access to Public Information states that information on corporations that make their assets publicly available is out of the scope of its application, as they are subject to a different publicity regime.

As for banking secrecy, the law<sup>16</sup> establishes that it does not apply to tax authorities, in particular the AFIP, although it is subject to a formal prior request addressed to these authorities. The same applies to the law governing the Capital Market controlled by the National Securities Commission,<sup>17</sup> which designates the information that this authority receives in the performance of its duties of inspection and investigation as secret.

The AAIP, a subsidiary to the Bureau of the Cabinet of Ministers and enforcement authority for Law N° 27.275, expressed itself concerning **fiscal secrecy** in Resolution N° 6/2019, citing Decree N° 206 of March 27, 2017 stating:

*"...(fiscal secrecy) shall not apply when the owner of the data has given consent for its disclosure, or when from the circumstances of the case it can be presumed that the information has been delivered by its owner to the regulated entity in the knowledge that such information would be subject to the regime of public disclosure of government management..."*

Furthermore, the AAIP claimed as its own the assertions of the Inter-American Court on Human Rights:

*"(...) the State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately. Access to State-held information of public interest can permit participation in public administration through the social control that can be exercised through such access." (Inter-American Court of Human Rights, "Claude Reyes et al. vs. Chile," Judgment of September 19, 2006, Paragraph 86).*

The violation of **professional confidentiality** is typified in Article 156<sup>18</sup> of the Penal Code.

It is plain, thus far, that the legislation is contradictory and confused, which encourages a lack of transparency, since the same public agencies that possess the information are the ones exercising control and interpreting the scope of restrictions. In no instance are all rules bearing on the issue harmonised, nor are interests balanced. As a result of the two contradictory laws on this point, the result as of now has been non-disclosure.

<sup>16</sup> Article 39 of Law N° 21.526

<sup>17</sup> Article 25 of Law N° 26.831

<sup>18</sup> "Anyone receiving notice because of his status, duties, employment, profession or art, of a secret whose disclosure could cause harm, who reveals it without just cause shall be punished with a fine of one thousand five hundred to nine thousand pesos and special disqualification, as appropriate, for six months to three years."

## Recommendations

At most, a comprehensive primary law could specifically indicate “to what end,” “why,” “how,” “when” and “in what way” to arrange the disclosure of BO data in such a manner that all rights at issue can be safeguarded. The law could also determine exceptions to disclosure, defining objective scenarios where making basic data public could pose a serious risk or substantial harm to the person in question.

A comprehensive set of rules could stipulate more openness of data when dealing with subjects that are beneficiaries of subsidies, promotional regimes and tax exemptions, among other things. In this case, the public disclosure of acts of government, public interest in accountability and citizen oversight. In particular, exceptions established in favour of corporations that make public offerings should be reviewed, given that they ensure neither access nor completeness of information, and also do little to facilitate interoperability of data or unrestricted access.

With respect to public access, as far as extractive industries are concerned, it is possible to proceed with the pilot trial following the recommendations set forth in the principles above, guaranteeing public access to data through EITI reports and/or as open data on Argentine government websites, since it involves beneficiaries of special regimes that have already expressed their willingness to adhere to the regime under the conditions that the State requires for them to do so.

As set forth in the Open Ownership policy brief “[Making central beneficial ownership registers public](#),” a series of measures has been implemented in other countries to mitigate the risks potentially associated with the publication of data on beneficial owners:

1. First, implementers should follow the principle of **data minimisation**, compiling only what is adequate (sufficient to fulfil the stated policy aims), *relevant* (has a rational link to that purpose) and *limited to what is necessary* (not surplus to that purpose).
2. Second, we recommend creation of a system of **layered access**, whereby the country makes a smaller subset of the data available to the public than to the authorities. For example, it is hard to justify the need for the general public to see a person’s tax identification number, but the authorities may have need of such information. The table below offers an example of the data fields that would be available to the public and to the authorities.
3. Finally, implementers can establish **exceptions to publication** in circumstances in which someone could be exposed to disproportionate risks. For example, someone who has been stalked or harassed has a legitimate reason not to publish the combination of their name and home address. A protection regime of this kind should allow individuals to apply for protection of certain data fields, or all fields, prior to publication as long as the need to do so is substantiated by evidence. These should be reviewed according to a set of narrowly defined conditions, to avoid creating significant loopholes in a disclosure regime.

**Table 1. Instructional example of fields that appear in registers with stratified access**

Information available to the public	Information available to the authorities
First and last name	First and last name
Month and year of birth	Full date, place and country of birth
Country of residence	Full residential address
Nationality	Nationality
Date beneficial ownership started	Date beneficial ownership started
Whether an application has been made for the individual’s information to be protected from public disclosure	Whether an application has been made for the individual’s information to be protected from public disclosure
Nature and scope of interest in the entity	Nature and scope of interest in the entity

Information available to the public	Information available to the authorities
Status of Politically Exposed Person (PEP)	Status of Politically Exposed Person (PEP)
	Copies of one or more documents that confirm the identity of the ultimate beneficial owner
	Copies of one or more documents that indicate the nature and extent of the interest held (i.e., why this person is considered an ultimate beneficial owner)

We understand that collecting and publishing the suggested data is not in conflict with any other law in the Argentine legal system. On one hand, governmental entities subject to prohibitions against sharing and publishing information because it is covered by fiscal confidentiality (AFIP), financial confidentiality (FIU) or any other impediment (such as the IGJ), should not modify their actions given that the interested entities themselves (companies) are the ones voluntarily submitting their information.

On the other hand, Law N° 25.326 for the protection of personal data, establishes that sensitive data is that which reveals the *“racial and ethnic origin, political opinions, religious, philosophical or moral convictions, labour*

*union membership and information having to do with one’s health or sex life.”* It is understood that the publication of BO data would not violate this concept, since the data published would not be of a sensitive nature.

As for identification of the personal information of beneficial owners and their need to protect their private life, it is understood that the pilot trial would apply the jurisprudence of the Supreme Court of Justice of the Nation (CSJN), which established in CIPPEC, Rulings: u337:256, that in the case of persons or legal entities receiving social subsidies (and for the case in point extendable to tax benefits or tax exemptions, that is, government benefits), public interest outweighs personal interest, and therefore the information should be public in order to favour social control and public accountability.

## Structured data

### OO Principle

The data should be structured and interoperable.

- BO data should be available as structured data, with declarations conforming to a specified data model or template.
- Data should be available digitally, including in a machine-readable format.
- Data should be available in bulk, as well as on a per record basis, free of charge.

### In-country evaluation

The information that agencies request in their forms, systems or sworn statements is not homogeneous. According to a survey of regulations conducted for this study, there are differences regarding what information must be reported depending on the agency.<sup>19</sup>

Information on companies that engage in public offerings of their assets is available in different formats, on different sites, which makes access and interoperability awkward. Furthermore, provincial registers of corporate information are mostly structured in hard copy, and have not been digitised.

There is no coordination between the national level and the provinces to exchange information and centralise data, or at least, there is no structure or willingness to tackle this problem. Here we observe a major difficulty, particularly in relation to technological gaps separating the different provinces (both among them, and between them and the national government).

As mentioned in the OO Principles, at the Open Data portal of the Ministry of Justice and Human Rights one finds the Profile for National Application of Metadata for Open Data<sup>20</sup> and can verify that in “Profile

<sup>19</sup> With respect to the chain of ownership, while the FIU demands complete information, AFIP demands it for subjects from abroad.

<sup>20</sup> “Profile for National Application of Metadata for Open Data,” Argentina Data, n.d., <https://datosgobar.github.io/paquete-apertura-datos/perfil-metadatos/>.

Fields – Catalogue” the JSON format is included which is recommended in the standard published by OO.<sup>21</sup> Although it is embryonic, its potential utility could be evaluated, even considering an improvement of the *datasets* existing today.

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## Recommendations

We recommend that the pilot trial consider publishing the data collected in structured and interoperable formats. In development of the BO register, we recommend following the specific guidance in [Guidance on relational database design considerations for beneficial ownership information](#) which focuses on requirements for data publication to comply with the [Beneficial Ownership Data Standard \(BODS\)](#).

The LAIP, for its part, establishes in its Article 32 (Active Transparency) the need to publish any information that is useful, or is considered relevant for exercise of the right to access public information in open formats. In the case of the extractive industries, according to the LAIP, the need for transparency derives from the fact that they are holders of permits, concessions and/or licenses (sub-paragraph j) and/or, in turn, they receive fiscal benefits when they become part of the registers. Accordingly, one can draw upon what is already stipulated in national law to make the information available.

## Verification

### OO Principle

Measures should be taken to verify data.

- When data is submitted, verifications should be performed to ascertain that the datasets (on the beneficial owner, the entity and the relationship of ownership or control between the actual beneficiary and the entity) conform to known and expected patterns.
- Whenever possible, there should be intergovernmental coordination among existing systems authorised to collate the datasets.
- The data sent should be proactively verified/reviewed to identify possible errors, inconsistencies or any anomaly in the data, and it should be required of the entities displaying the data that they update the datasets.
- There should be mechanisms to raise red flags, both requiring (private and public) entities concerned with the data of the beneficial owner that they should report on discrepancies such as through the creation of systems to detect suspicious patterns.

### In-country evaluation

Digitisation in the National Private Sector and extensive use of digital procedures could be seen as a minimal advance towards achieving transverse validations. Although taxpayers have been interacting with AFIP exclusively via digital means for a long time, currently most agencies interacting with AFIP use the Remote Procedures Platform (TAD – Trámites a Distancia), for instance, which is accessed remotely through different validation mechanisms administered by public agencies such as AFIP.

There are mechanisms for alerts or reports in operation in certain governmental agencies at the national level, and this, in principle, could prove to be helpful for carrying out validations.<sup>22</sup> Furthermore, the use of predetermined data fields for data that is already verified (or verified with some degree of certainty) by competent authorities,<sup>23</sup> may provide alternatives for moving forward with the validation process.

Nevertheless, as of now we cannot say that Argentina is complying with this principle.

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<sup>21</sup> “Beneficial Ownership Data Standard: Key concepts,” Open Ownership, n.d., <https://standard.openownership.org/en/0.2.0/schema/concepts.html>.

<sup>22</sup> The FIU has Reports of Suspicious Operations (ROS).

<sup>23</sup> By way of example, for use of digital procedures with the National Government the users’ identity is validated through access via AFIP validation mechanisms, the National Register of Persons, and so on.

Information registers and regimes are based on sworn statements signed by people who are required to do so. In this regard, there is a major weakness owing to the lack of automatic cross-checking to enable systemic validation. AFIP is the agency with the largest volume of information and systems that allow for cross-checking of this kind. Nonetheless, we note tremendous data validation challenges since, in the absence of coordination

and automated transverse cross-checking, different agencies of the same National Government maintain parallel registers with different information and heterogeneous and diverse criteria.<sup>24</sup>

Once again, the lack of communication and systems integration with the provinces poses a challenge in view of the existing asymmetries of the institutional rules analysed, as well as difficulties with harmonisation.

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## Recommendations

It is necessary for agencies in the public sector to coordinate their actions and establish shared parameters. It is necessary to strengthen collaboration among all sectors, including civil society, in a commitment that involves the possibility of checking inaccuracies, errors, falsehoods, omissions and any other factor undermining the credibility of published information.

We recommend establishing systems that ensure that data is reliable. These should include the following:

- a. automatic validation in authentication and loading processes to invalidate erroneous data prevent it from being loaded;
- b. to enable the general public to report errors or inconsistencies as long as the reporting party has legally obtained the information they use to check the data, and
- c. automatic validations and/or cross-checking of data among agencies.

## Up to date and auditable

### OO Principle

Data should be kept up-to-date and historical records maintained.

- The initial registration and subsequent changes in beneficial owners should be legally required to be submitted on a timely basis, with up-to-date information within a period of time that is short and defined after the changes take place.
- Subjects providing information should be required to annually confirm the accuracy of beneficial ownership data and report any change in the data.
- An auditable register of corporate bodies should be made available through storage and publication of historic records, even for inactive and dissolved companies.

### In-country evaluation

The lack of integration indicated in the foregoing sections also has a negative impact on the updating of data and historical records. Different agencies have different criteria in this matter and are not currently able to agree on what is considered up-to-date information, or what is the cut-off point for replacing historical data. This discrepancy becomes apparent when comparing the positions of the FIU and AFIP, insofar as the former requires reporting as soon as modifications occur, whereas AFIP only requires them annually.

Since there is no single agency in charge of this matter, there is no primary responsibility assigned in this regard. Responsibility rests only with the agencies in question, and only up to the limit of their competencies, which appear inadequate for achieving the objective being pursued.

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<sup>24</sup> The register of Law N° 24.196 published in the CIMA portal does not match the Register of Mining Companies published on the AFIP portal. On the other hand, the Procedure for Preventive Cancellations implemented in 2020 by the Secretary of Mining takes into account the lack of automated cross-checking that would allow for a permanent clean-up of the registers.

It should be noted that at least the IGJ has a Register of Inactive Entities (REI). This is encouraging, considering that the agency manages the largest volume of registered parties in the country, because its jurisdiction includes the City of Buenos Aires.

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## Recommendations

We recommend in the pilot trial that criteria for updating regulations in force be amended for extractive industry regimes, establishing that any change must be reported within fifteen days (or a similar period) after taking place. Accordingly, compliance should be strictly enforced.

If a law is established that integrates all issues involving BO, a comprehensive update in procedure should be considered for all agencies so as to avoid confusion and an excessive burden for those required to file reports.

## Sanctions and enforcement

### OO Principle

Adequate sanctions and enforcement should be adopted in the event of non-compliance.

- There should be effective sanctions for non-compliance with disclosure requirements that are proportional, deterrent and feasible, including sanctions for non-submission, late submission, incomplete submission and false submission of data.
- The sanctions should be imposed on the person who makes the declaration, on the beneficial owner, on the registered officers of the company and on the company making the declaration.
- The sanctions should include monetary and non-monetary penalties.
- The relevant agencies should be empowered and resourced to enforce the sanctions that exist for noncompliance.

### In-country evaluation

Administrative sanctions imposed by the FIU in 2021 numbered fewer than 50<sup>25</sup> and information could not be found on publicly accessible websites concerning actions of the FIU as petitioner or plaintiff in criminal cases.

In the case of AFIP, no record could be found of offenders that disclosed substantial penalties imposed by the agency. With regard to the actions of the AFIP in criminal tax matters, a report by the Internal Audit Office<sup>26</sup> for 2019 indicates that the greatest problems detected are: delays in filing complaints; the lack of staff; the lack of a record of fundamental evidence and support required for decisions to impose judgments contrary to the interests of the Treasury; and a failure to put forward expert witnesses in response to resolutions calling for the conduct of forensic accounting consultations in cases in which the Agency is the plaintiff.

In the domain of criminal enforcement there is a very low conviction rate for crimes against the economic and financial order, tax crime and offences against Public Administration. This conclusion was reached by consulting the Report of Convictions for 2019, which is available via the statistical data portal<sup>27</sup> of the National Office of Recidivism of the Ministry of Justice and Human Rights. It was possible to ascertain that in the

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<sup>25</sup> "FIU Sanctions," [argentina.gob.ar, n.d., https://www.argentina.gob.ar/uif/sanciones-uif](https://www.argentina.gob.ar/uif/sanciones-uif).

<sup>26</sup> "Criminal proceedings: Criminal tax section (DI RPAR) – Final Follow-up report," Federal Administration of Public Revenues, 2019, <https://www.afip.gob.ar/transparenciaactiva/documentos/auditoria/LOI-26-2017.pdf>.

<sup>27</sup> "Estadísticas," [argentina.gob.ar, n.d., https://www.argentina.gob.ar/justicia/reincidencia/estadisticas](https://www.argentina.gob.ar/justicia/reincidencia/estadisticas).



whole country for that year there were 625 convictions for the crime of concealment by acquiring, receiving or hiding money, objects or assets of criminal provenance; 80 for simple evasion and 2 for qualified evasion; 46 for bribery in all its forms; 6 for dealings incompatible with public service; 18 due to enforcement of the criminal tax law, and only 3 for money laundering.

From the same report it emerges that judicial activity involving these kinds of crimes in most Argentine provinces (with the exception of Buenos Aires, C.A.B.A., Santa Fe, Córdoba and, to a lesser degree, Mendoza) is null.

For the extractive industries, the laws in force concerning permits and concessions as well as tax benefits establish administrative penalties for failing to provide the information required of them. It was not possible to verify the existence or publication of a Register of Offenders.

From the information compiled in the interviews conducted, we ascertained that BO information is not currently required for applicants to acquire permits or tax benefits at any level of the government.

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## Recommendations

In the current scenario (without a comprehensive law), proceeding with the pilot trial, which would require BO information from registered parties or parties seeking to enrol in extractive industry registers, in cases of failure to comply with this requirement, we recommend the application of existing penalties in the regulations in force governing the special regimes for these industries and, along the same lines, implementation of appropriate controls to restrict the use of benefits and/or remove from registers those who fail to uphold such requirements.

We also recommend publication of the list of offenders who have violated the regimes, as well as coordination with other agencies to keep information up-to-date.

In the event that a law is promulgated determining specific penalties, in order to enforce them it will be critical to increase coordination with law enforcement, and, in particular, with the Office of the Public Prosecutor.

# Conclusions

The steps that Argentina has taken on the requirement to report BO data are not insignificant. They are, however, the result of the isolated actions of certain national government agencies with partial competency as well as the resources to move forward, though only up to a certain point. It is precisely at this point that the next step must be taken so that disclosure of beneficial owners can become a public policy borne out over time. To achieve this, of course, the work undertaken thus far must continue.

Not only must there be a law to establish a central BO register, but as a preliminary step it would be appropriate to foster conditions so that such a law can be implemented as soon as it passes. Accordingly, it is indispensable to strengthen coordination among the relevant actors, in particular, through consistent and sustained actions over time, first within the Executive Branch of government, and subsequently in the provinces, making use of the agenda in place in the extractive sectors.

EITI is a response to the demand for greater transparency and accountability that the extractive industries have in comparison with other sectors. Nevertheless, national governments are also included in the standard and are supposed to ensure compliance and adherence on the part of companies in the sector.

Up until now, it has not been possible to confirm significant progress with regard to Requirement 2.5 of the EITI Standard. The report on Scope, Materiality and Systematic Disclosure<sup>28</sup> issued in 2020 states that there was no information available to assess the matter, and recommended an analysis of certain modifications bearing on the promotional regimes in force in order to acquire the necessary information. So far, such action has not been taken.

The Progress Report for 2021 states that the purpose of adhering to the Opening Extractives programme was to develop guidelines and a work plan to be implemented with public agencies and the industry.

The context in which the Road Map will be developed to comply with the standard is timely, and, in spite of the shortcomings noted, we understand that the political and administrative will does exist to move forward to comply fully with Requirement 2.5.

The mining and hydrocarbon authorities have the functional and administrative competencies to collect BO data from companies in the sector through the recommended pilot trial via registration of the companies in promotional regimes, by inserting fields specifically for BO.

However, this would only be a pilot trial, for beta-testing fields, requirements, real possibilities for implementation, etc. Furthermore, the Secretary of Mining and the Under Secretary of Hydrocarbons should have technical assistance and support to strengthen their role as the country's coordinators and drivers in this matter.

On the other hand, the role of civil society organisations is essential to bring about a dissemination of the initiatives, and their activities are also subject to the rule of transparency that applies to other actors.

The final goal is an ambitious one, and requires an ongoing and iterative institutional commitment, for which numerous actors will be needed to achieve a basic convergence that can supersede impediments.

The gradual integration of the provinces into EITI is indispensable. Because of this, to carry forward the pilot trial, it might be possible to begin in those provinces in whose territories companies that are already EITI participants operate, especially companies that have developed the most along these lines.

<sup>28</sup> Santiago J. Dondo, Mariana Palacio, and Juan Cruz Vieyra, "Report on Scope, Materiality and Systematic Disclosure," BID and EITI Argentina, June 2020, 54, [https://www.argentina.gob.ar/sites/default/files/informe\\_de\\_alcance\\_materialidad\\_y\\_divulgacion\\_sistematica\\_0.pdf](https://www.argentina.gob.ar/sites/default/files/informe_de_alcance_materialidad_y_divulgacion_sistematica_0.pdf).



At the same time, it is indispensable to create working situations where high technical capacities, operational tools and participants with some degree of autonomy can interact so they can select for themselves the best options for addressing implementation issues.

The challenge is not an insignificant one, yet moving forward in a preliminary arrangement with the extractive sectors – that have already expressed their intentions by adhering to EITI, albeit with the nuances we have glimpsed throughout this study – is one possible option for taking definite steps towards the ultimate goal.

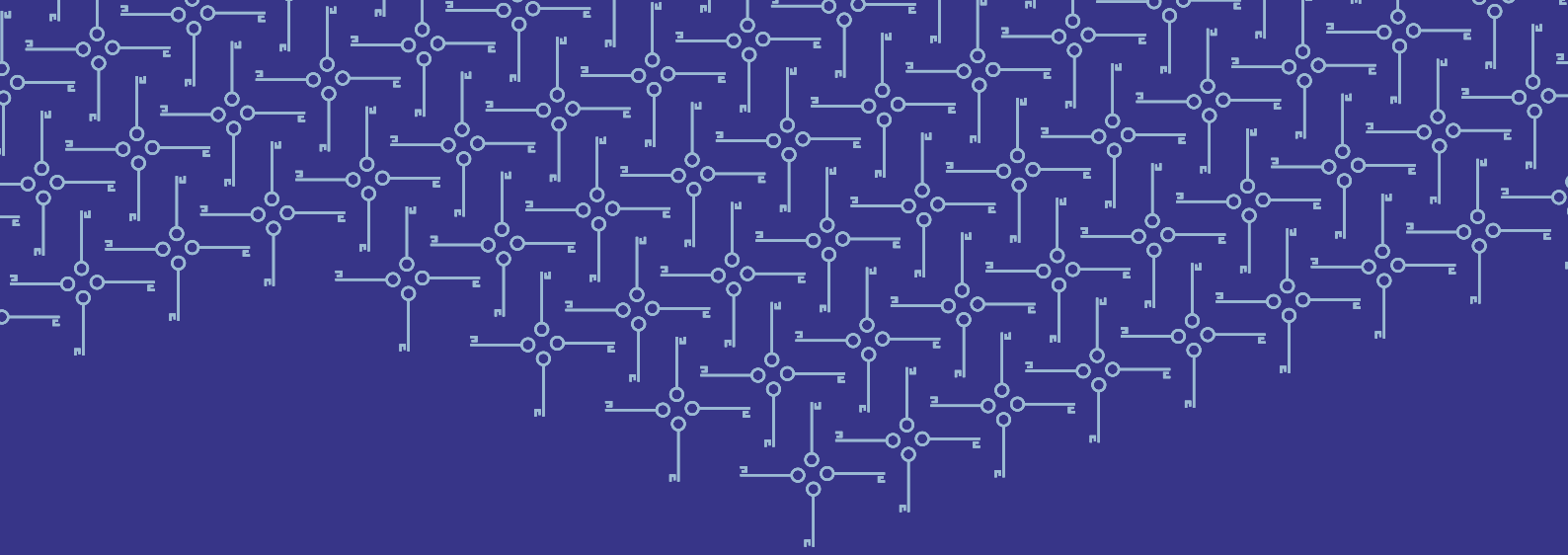
## Annex

# List of actors interviewed

Public sector	Private sector	Civil society
<ul style="list-style-type: none"> <li>• Andrés Vera (Under Secretary of Mining Development) and Gustavo Rodríguez (Advisor) *</li> <li>• Verónica Tito (Legal Advisor to the Under Secretary of Hydrocarbons) *</li> <li>• Verónica Grondona (Director of International Taxation – AFIP)</li> <li>• María Eugenia Marano (Director of Supervision – FIU)</li> </ul>	<ul style="list-style-type: none"> <li>• Martín Kaindl (Director of Institutional Relations and Administration – IAPG) and Fernando Halperín (Communications Plan Coordinator – IAPG) *</li> <li>• Luciano Berenstein (Executive Director – CAEM) *</li> <li>• Claudia Steinitz (Manager of Taxation SHELL S.A.)</li> </ul>	<ul style="list-style-type: none"> <li>• Andrés Bertona (Manager of Projects for Citizenship and Government Institutions – Legislative Directorate) *</li> </ul>

\* Members of MSG

Interviews were also requested with YPF S.A., the General Inspectorate of Justice, Office of National Registration of Companies and Tenders and Bankruptcies of the Ministry of Justice and Human Rights, National Securities Commission, the Civil Association for Equality and Justice and Patagonia Gold. These interviews could not be conducted owing to a lack of availability of the persons to be interviewed, or a lack of response to multiple inquiries.



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