CEPA
Centro de Economía Política Argentina

'ARGENTINA ON SALE' BILL

Economic analysis of the 'Ley Omnibus' Bill issued by President Milei

January 2024

Introduction

The third assault. Economic power: 3 - workers: 0

President Javier Milei issued the ‘Ley Ómnibus’ Bill to the Congress on December 27th, just a few weeks after taking office. It is the third setback for workers and milestone for the economic power.

1. The first was Caputo's 'Liquefier Plan' on December 12th, which involved an unprecedented 120% devaluation that set the exchange rate at its highest level since 2001 and will more than double December's inflation. This was combined with a 140% devaluation for the industry (due to the increase in the ‘Impuesto País’ Tax); a rise in fuel prices; the announcement of the elimination of subsidies for transportation, electricity, and gas tariffs; and the suspension of public construction works throughout the country. The issues were promptly analyzed by CEPA.[1]

2. The second was Sturzenegger’s ‘Jungle Law’ Emergency Decree which we analyzed in this note for ‘El Cohete a la Luna’ news portal[2], with deregulations in several economic sectors (inner trading, health, customs code, credit cards, mining, land law, the aeronautical sector, among others), the conversion of all public companies and also clubs into joint-stock companies, and a historic setback in terms of its magnitude concerning labor law and trade union associations law.

3. The ‘Argentina on sale’ Bill -wrongly named ‘Ómnibus’ (making reference to a bus for the wide variety of issues it addresses)- is the third onslaught.
In this report, which is divided in three parts, we address the main issues of the bill. Firstly, benefits for the economic power. Secondly, the attacks to public employment, pension benefits and the criminalization of social protest. On the third place, we address a new set of deregulatory proposals, which match the content of the Emergency Decree 70/2023, and their impacts on the different sectors of economy.

About declarations of emergency and the delegation of legislative powers
Art. 3 of the bill declares public emergency in the following matters: 1) economic 2) financial; 3) fiscal; 4) social security; 5) security; 6) defense; 7) tariffs; 8) energetic; 9) sanitary; 10) administrative; and 11) social. There are three more

[1]https://centrocepa.com.ar/informes/456-analisis-de-las-principales-medidas-anunciadas-por-el-gobierno-de-milei-14-de-diciembre-de-2023
[2] Link: https://www.elcohetealaluna.com/por-fin-libres-sin-molestos-arbitros/

additional matters (5, 6 and 8) in comparison to those included in the Emergency Decree 70/2023.

Both articles 1 in the Emergency Decree 70/2023 and article 3 of the bill set the emergency until 12/31/2025.However, the project establishes the emergency to support legislative delegations in accordance with Article 76 of the National Constitution (CN), and it even allows the National Executive Power (PEN in Spanish) to extend the emergency period by an additional two years. Given that the duration is an essential element of legislative delegation, constitutional and administrative doctrine holds that the PEN should not be able to extend this term. This is a power that remains reserved for the Congress. Therefore, here lies the first unconstitutional defect of the bill.

Additionally, Article 3 proposes that the regulations issued under the delegations be permanent. This conflicts with the exceptional nature of legislative delegation in matters of public emergency, given that authorizations should be confined to the specific circumstances of the situation. This is why the doctrine opposes regulations issued under emergency delegations having validity for a period that exceeds the situation that justified them.

Art. 4 would grant the second constitutional requirement for legislative delegations: the bases. Nevertheless, and as it usually happens, it is about vague statements.

Legislative delegation has been, as the Emergency Decree, incorporated to the National Constitution in the 1994 reform with the aim of mitigating presidentialism, not exacerbating it (as pretended by this bill). Its interpretation and implementation must be restrictive so that the separation of powers scheme and the republican government system are preserved.

The analyzed initiative does exactly the opposite: it provides broad and diverse legislative authorizations in favor of the Executive Branch (PEN). If incorporated to Decree 70/2023, these proposals would alter the institutional order preserved by the National Constitution.

These are the legislative delegations included in the project:

- Art. 6: Reorganization of the National Public Administration (APN in Spanish). In this context, the Executive Branch will be allowed to reformulate the regulatory framework of the National Public Administration, modify the civil service system, transform entities and agencies created by law, and intervene in any NPA organization.

- Art. 7 Public Procurement System. The Executive Branch will be able to reorganize the procurement system of the National Public Administration, which includes, among other regimes, public construction works (Law 13.064), the General Procurement System (Decree 1023/01), the Public Employment Law (Law 25.164), and public works concessions (Law 17.520). It will also be able to apply mechanisms for conciliation, mediation, settlement and arbitration, establish technical panels and create administrative tribunals.

- Art. 8 State-owned companies and entities. The ‘declaration subject to privatization’ of companies and entities listed in Annex I triggers the delegation under Article 11 of Law 23.696, allowing the Executive Branch to proceed with the total or partial privatization, or liquidation, of companies and entities that are wholly or partially owned by the National State. By doing so, the privatization regime of Law 23.696 is restored and the creation of a new one with more boundaries for the Executive Branch and with major controls from the Congress is omitted.

- Art. 9 Privatization of minority entities. The Executive Branch may also dispose of stakes in companies in which it does not hold a majority share.

- Art. 16 Public credit operations. Art. 65 of Law 24.156 is amended to remove the requirement that restructuring must result in an improvement in the amounts, terms and/or interest rates of the original operations.

- Art. 29 Conciliation, settlement and arbitration. The Executive Branch will be able to establish arbitration mechanisms abroad for contractual or extracontractual conflicts.

- Art. 33 Renegotiation or rescission of current contracts. The Government may renegotiate or rescind any kind of contracts which were agreed on a previous date to 12/10/2023.

- Art. 106 Suspension of pension mobility and authorization for the National Government to establish an adjustment formula. Until such a formula is established, periodic increases may be granted, with priority given to 'beneficiaries with lower incomes’.

- Art. 207 Export duties. The Executive Branch may reduce or eliminate rates and increase them (with cap of 15%). Special term for delegation is due to 9/12/2027.

- Art. 215 Labor relations regularization. The Government will regulate the private employment regularization scheme, which will include the extinguishment of criminal actions and debt forgiveness.

- Art. 226 Transfer of the Sustainability Guarantee Fund to the Treasury. The Executive Branch will adopt every necessary measure for instrumentation.

- Art. 228 Authorization and operation of establishments where animals are slaughtered or animal products are processed. The Government will regulate the framework for construction, sanitary engineering, hygienic aspects, industrialization, and transportation of meat and animal products.

- Art. 316 Creation of the National Regulatory Authority for Gas and Electricity. Elimination of ENRE and ENARGAS. The Executive Branch will issue every rule and act that succeed to make effective the stated.

- Art. 317 Regulatory framework for electric energy. The Government will amend the regulatory framework. Among the bases there is no mention of consumers' rights.

- Art. 318 Fiduciary funds for the energetic sector. The Executive may alter, transform or eliminate fiduciary funds for the energetic sector, including those which are destined to subsidies.

- Art. 320 and following. Greenhouse Gas Emission Allowances. The Executive Branch will be empowered to set emission caps and to stablish a market of emission rights.

- Art. 605 Public agents' availability. The Government may fix conditions to the regime of available state agents.

Both the Emergency Decree, that at the date of this report's publication has not been discussed by the Congress, which is part of the 'Ley 'Omnibus' Bill and the legislative delegations would definitely and irreparably alter the constitutional scheme of separation of powers. The reason lies in the obvious concentration of legislative functions by the Executive Branch.

Conclusions

The bill project presented at the Congress by the Government is a breaking point in several matters. One of the main points is dismantling public patrimony by declaring 41 State-owned companies as 'subject to privatization'. Among them, there are companies which are essential for a national development project. Some examples are YPF (acronym in Spanish for fiscal oil fields), ARSAT (National Space and Airborne Communications Agency), BNA (National Bank of Argentina), AA (Aerolíneas Argentinas, flag carrier of the country), Nucleoeléctrica (the Argentine nuclear power company) and Dioxitek (a company specializing in radioactive material management), among others.

The government's argument to reduce deficit has proven false given that many of the above-mentioned companies have had surplus if well administered. As a consequence, they do not represent a burden for the State, but the contrary. Therefore, the intention seems to enable new private businesses financed with our public patrimony.

However, the public sector dismantlement does not stop on privatizations. It includes selling off the Sustainability Guarantee Fund (created with the purpose of making social security self-sufficient) of ANSES. In this case, the liquidation and sale of shares in the major private companies in this fund's portfolio are ordered. This is an old wish of the economic power that implies a patrimony loss for the State and a drawback of public presence in the board of the main companies, which has been historically considered as outrageous.

Despite the official argument that deficit is the mother of all problems, the project enables the declaration of assets (probably coming from money laundering) combined with a strong reduction of Personal Assets Tax. Moreover, a new investments regime is to be stablished which is extremely beneficial for foreign companies. This would increase tax expenditure for sectors which are, by nature, profitable.

In the case of the reduction of the Personal Assets Taxation, the proposal is reducing the aliquot from 1.75% to 0.5%. Additionally, it removes the differentiated tax rates on assets declared abroad, which previously encouraged the repatriation of wealth. All of these reforms have a negative impact on revenue collection and on the progressive aspect of the tax system.

Moreover, this is related with the declaration of assets that had been previously encouraged by Mauricio Macri.In this case we are facing a lax policy given that, in addition to the minimal 5% tax rate on amounts over US$ 100.000, there is no requirement for money to be kept in the country for a specific period of time. This enables those who failed to pay the Extraordinary Contribution on Large Fortunes to take advantage of it.

This is not the only money laundering proposal given that a labor amnesty is proposed under the grandiose label of 'Promotion of Registered Employment'. However, this policy, far from representing an incentive for registration, is essentially a pardon and debt forgiveness for companies that had unregistered employees, as well as those that withheld contributions and liabilities but did not pay them to Social Security. Finally, it extends the probationary period from 3 to 8 months, although it is not clarified how it would encourage the generation of employment.

Another of the projects that will benefit economic power is the creation of the Incentives Scheme for Large Investments (RIGI in Spanish). This scheme consists of a series of tax and exchange benefits for dynamic sectors such as agroindustry, forestry, mining, energy, gas and oil. In other words, the focus is on promoting primary sectors instead of encouraging industrial development. This is another case in which the so called worrying for public deficit would seem to vanish, given that they set a series of tax benefits in Wealth, VAT rate, export and import duties and other taxes. All of this will turn out in a decrease in fiscal revenues and an actual rise in public deficit. Moreover, unrestricted availability of foreign currencies for nearly every exporting sector may provoke severe inconveniences in terms of strengthening international reserves.

This bill includes a liberalization of the hydrocarbons sector, which implies not only the privatization of YPF but also abandoning the self-supply and energetic sovereignty while turning to a rent maximization logic. This, in the medium term, could lead to a logic of 'overexploitation' and 'underexplotation' of deposits, as happened in the 1990s, severely compromising national energy sovereignty. Moreover, there exists a particular ‘regulation’: the prohibition for YPF to sell fuels under international parity. What is the purpose behind this imposition that strikes against the company’s freedom to set its own prices?

Other significant reforms include changing the process for debt restructuring, granting the Executive the authority to incur debt without Congressional intervention; and the consolidation of National Public Sector debt, which mandates the transfer of public debt securities held by the Non-Financial National Public Sector, including Trust Funds and companies with majority public ownership, to the National Treasury.

In customs matters, export duties aliquots were increased, which must be analyzed in relation to the 120% devaluation of December 2023. All of this dramatically improved competitivity levels of the exports sector. However, this policy was influenced by the lobbying power of certain sectors, which managed to secure a 0% export duty rate, while others obtained a rate lower than the 15% initially established as the general standard. Therefore, the adverse effect stroke on the industrial sector. Specifically, the automotive sector.

Other deregulations and reforms included in the project have severe environmental impact. This refers to the Fire and Forest Management Law, which tacitly authorizes burning and permits deforestation. Besides, it would allow mining companies to extract minerals from periglacial environments, which were until now protected by the Glacier Law.

Other important point is deregulation of fishing which eliminates the setting of quotas by vessel, area or type of fleet by the Federal Fishing Council. Moreover, it overturns the requirement to unload the fishing catch in Argentine docks, which had generated economic activity and facilitated oversight. The requirement for Argentinian crew members on board is removed, and preferences in the allocation of licenses for ships built in domestic shipyards are eliminated. For all these reasons, governors from provinces in the Patagonia -from every political party- have expressed their reject to this reform and have warned about the severe economic and social consequences in case of approval.

Moreover, other activities are deregulated, such as insurance and tourism; sugar import is allowed; the book price law is overturned; tickets resale in sports events is permitted; the Competence Defense Law is amended; every restriction for consumer goods income in the luggage regulations is dismissed; and the Education Financing Law is modified so that every province has to negotiate independently on labor conditions, educational calendar, teaching salaries and other conditions. This will lead to exacerbate educational disparities between provinces.

As a complement to these reforms that will benefit the economic power, there will be more amendments against labor movement and workers in general. On one hand, layoffs are anticipated in the public sector, affecting not only contracted employees but even the job security of permanent staff.

Additionally, the pension adjustment formula is suspended and replaced with discretionary increases from the Executive Branch, which allows for significant erosion of benefits in the context of accelerating inflation.

These attacks on the living conditions of workers and retirees are complemented by reforms aimed at criminalizing social protest, which involve changes to the Penal Code to expand the grounds for prosecution of those who organize or participate in demonstrations.

Milei's three attacks—first, Caputo's Liquefier Plan; then, Sturzenegger's 'Law of the Jungle' Decree; and finally, the 'Argentina on sale' Law discussed in this paper —are aimed at distributing this pool of money while removing the state containment measures that could reverse the situation. In other words, to ensure there is no turning back. The culmination of this process, in the President's view, is dollarization, a decision that would solidify and freeze the new economic structure and dynamics, positioning the State as guarantee of private businesses' interests.

This document provides a translation of the principal findings from our report. For a comprehensive review, the full report in Spanish language is available at the following link:
https://centrocepa.com.ar/informes/460-ley-argentina-en-venta-analisis-economico-de-la-ley-omnibus-del-presidente-milei

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Contact us

Email
internacional@centrocepa.com.ar

Web site
https://centrocepa.com.ar/

Social media
@ctrocepa

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Centro de Economía Política Argentina