



Chile | Developing a legal framework for EPR in Chile

A mandatory EPR system for packaging is currently introduced to the country of Chile. An associated legislation by the constitutional court to provide a legal framework (Ley N° 20.920, Ministry of Environment, 2016) is underpinned. A draft of the decree on packaging was first published in spring 2019 and after passing through public consultation, the decree was finally approved by the Council of Ministers in May 2020. Two system operators (PROs) have already been founded in order to prepare oneself once the system is opened.

Introduction

Chile has a total population of over 18 million inhabitants. The South American country borders the South Pacific Ocean to the west; its coastline is over 6,000 km long and the country covers a total area of approximately 756,000 km². Around 90% of the population lives in urban areas, primarily in the metropolitan area of Greater Santiago.



Waste management in Chile

Current collection and recycling systems

The waste collection rate across Chile is at almost 100%. Approximately 8 million tonnes of municipal solid waste are generated every year, showing an increasing trend - particularly in the metropolitan area of Santiago. Between the years 2000 and 2010, the waste volumes rose by 30%. In most cases, everyday household waste is collected door-to-door in plastic bags, with collection coverage of almost 100%. Recyclables are collected primarily at central collection points equipped with containers. Kerbside collection takes place in fewer than 10 local authority areas. Of these, only 2 have a comprehensive and extensive collection system.



PREVENT

In Chile, household waste management services are generally funded through the payment of real estate contributions. Nearly 80% of properties are excluded from tax, and thus do not pay for the collection and disposal of their waste. This causes a **funding problem for the municipal authorities**.¹

There are 7,277 central drop-off points, of which 87 are staffed and equipped with a compactor (as of 2018). As far as sorting is concerned, there is currently only one sorting plant, at which mixed recyclables are sorted manually.

No household waste is currently incinerated. More than 95% of waste generated by households is disposed of in landfills. About 23% of waste disposed of in Chile ends up at dumps that do not comply with the regulations for sanitary landfill.

Up to now, recycling of waste is done almost completely by the informal sector. It is estimated that 4% to 10% of municipal-level waste is recovered, and 8.5% of all plastic waste is recycled. About 17% of total recycled plastic waste originates from households.²

National Waste Programme

There is a **National Waste Programme in place, which is designed to support sustainable waste management systems**. Nonetheless, the majority of the received funding is invested in projects which aim to increase the percentage of waste that is finally disposed of in sanitary landfills and/or to close facilities that lack the appropriate public health or environmental authorisations. However, the fund can also finance initiatives to encourage the reuse, recycling and recovery of waste. Waste management solutions have to be developed by municipal-level organisations; applications from others will only be granted in exceptional circumstances.

A **Neighbourhood Improvement Programme operates in addition to the National Waste Programme and aims to improve sanitation**. This includes financing waste management projects. The programme is funded via the public sector budget, and aims at municipalities and municipal associations. Multiple initiatives can be financed concurrently. This includes initiatives avoiding household waste generation and improvement of waste management practices, including management models, infrastructure and equipment for recycling-drop-off stations.

National Waste Strategy

In 2007, the Council of Ministers for Sustainability approved the National Waste Policy 2018-2020. Since the policy has not been signed by the President of the Republic yet, it has not been officially published. However, it is applied in practice already. Its objective is to establish, coordinate and guide public efforts to increase waste recovery rate to 30% between 2018 and 2030.

The national strategy and its action plan guide the Ministry of Environment until the Circular Economy Roadmap, a long-term planning tool, is developed. During March 2020, 25 key actors were asked to be part of the strategic committee tasked with drawing up the roadmap, which will in turn drive the adoption of the circular economy in Chile.³ These key actors included trade unions, public bodies, universities, innovation centres, consumers and informal recyclers, among others. The roadmap will be developed by the Eurochile Business Foundation, and decisions will be taken by an executive council advised by a number of European countries, the OECD, the IDB, the World Economic Forum and the Ellen MacArthur Foundation. A number of topics have already been set in prior to discussions, such as modifications to increase the cost of disposing of waste in sanitary

¹ OECD, Environmental Performance Reviews: Chile 2016. <https://www.oecd.org/env/oecd-environmental-performance-reviews-chile-2016-9789264252615-en.htm>

² Ministerio del Medio Ambiente, 2019: “Ministra Schmidt convoca a grandes empresas a unirse a pacto para combatir contaminación por plásticos,” <https://mma.gob.cl/fundacion-chile-sera-el-articulador-del-inedito-acuerdo-ministra-schmidt-convoca-a-grandes-empresas-a-unirse-a-pacto-para-combatir-contaminacion-por-plasticos/>; accessed 02 June 2019.

³<https://www.paiscircular.cl/consumo-y-produccion/medio-ambiente-convoca-a-25-actores-clave-para-desarrollar-la-hoja-de-ruta-que-impulsara-la-adopcion-de-la-economia-circular-en-chile/>

landfills as well as defining the role to be played by waste-to-energy systems in Chile. The landfilling target of only 10% by 2040 is also currently discussed.

In January 2020, the **Plastics Pact Roadmap** was officially launched. It sets out 18 challenges, 35 solutions and 81 concrete initiatives designed to encourage appropriate use of plastics in industry and to reduce their impact on the environment.⁴ The Pact aims to meet the four goals by 2025 agreed upon by a group of seven founding companies in April 2019, and to prompt concrete action aimed at establishing a circular economy. The Plastics Pact in Chile set the following four goals for 2025:

- Take action to eliminate problematic single-use plastic containers and utensils through redesign and innovation.
- 100% of plastic containers should be designed to be recyclable, reusable or compostable.
- A third of all plastic containers must be recycled, reused or composted de facto.
- The various types of plastic containers should contain an average of at least 25% recycled material.

Plastic bag ban

In August 2018, Chile published a law that will eventually prohibit single-use plastic bags given out by businesses throughout the country, making it the first South American country to do so.⁵ For the first six months after the law came into effect, a maximum of 2 plastic bags could be issued to customers for each purchase. After six months, large companies, including supermarkets and retailers, were banned from issuing them. By August 2020, the ban on issuing plastic bags will expand to cover micro, small and medium-sized companies, effectively covering every business in the country by this law. This ban also affects biodegradable plastic bags, as they are not subject to any official standards in Chile.⁶

Proposal to ban disposable products⁷

In March 2020, a draft law was approved by the Senate Environment Committee which, if fully implemented, would prohibit the use of disposable products, mandating that a high percentage of recycled plastic should be used in plastic bottles and improving returnability. Specifically, it states that all plastic bottles will have to consist of at least 25% recycled material by 2025, and 50% by 2030 – an even more stringent requirement than the one set by the European Union in 2019. In fact, the law, which has not taken effect yet, aims to go even further by increasing the percentage of recycled material to 70% by 2050. The law also forces large retailers to provide returnable packaging, which will have an effect on e-commerce and packaging for deliveries. It prohibits the supply of any single-use, non-recyclable container by any establishment that sells food, and also allows for inspections by ‘popular initiative’; in other words, any citizen will have the power to report violations of the law and to demand the establishment concerned comply with it.

EPR scheme for packaging

Development

Chile has ratified a number of important international treaties in this area. Because Chile has become a OECD member in 2010, it is forced to meet higher standards on waste management and

⁴ <https://www.paiscircular.cl/industria/pacto-de-los-plasticos-se-fija-su-hoja-de-ruta-innovacion-normativa-y-una-nueva-cultura-de-consumo-aparecen-como-primeros-desafios/>

⁵ <https://www.leychile.cl/Navegar?idNorma=1121380&buscar=21100>

⁶ <http://chaobolsasplasticas.cl/>

⁷ <https://www.paiscircular.cl/industria/ley-que-prohije-envases-de-un-solo-uso-obliga-a-incorporar-un-alto-porcentaje-de-material-reciclado-en-botellas-e-impulsa-retornabilidad/>

recycling policies, according to the evaluations and recommendations set out in the Environmental Performance Reviews reports. In an effort to meet these higher standards, the first steps towards implementing an EPR scheme were taken by public-private working groups. The members of these groups built solid relationships that facilitated later work.

In 2013, a long-awaited waste management bill entered Congress. It was officially published in 2016 as the **Waste Management, Extended Producer Responsibility and Recycling Incentives Act** (Ley N° 20.920, Ministry of Environment, 2016)⁸. The law sets conditions for establishing EPR systems for six priority types of waste:

1. Tyres
2. Packaging
3. Lubricant oils
4. Electrical and electronic equipment waste (WEEE)
5. Automotive batteries
6. Portable batteries

The law makes **producers of priority products liable for organising and financing systems to manage the products** they market in Chile. Under the law, producers must:

- a. Register in the Pollutant Release and Transfer Register (RETC)⁹ system.
- b. Organise and finance the collection of waste generated from priority products anywhere on Chilean territory, as well as the storage, transportation and treatment of this waste by a system operator.
- c. Comply with the objectives and other obligations set out in the decrees applicable to each category of priority product.
- d. Ensure that waste associated with priority products is managed by authorised and registered managers.

Specific details, including the setting of objectives and the obligations associated with the producers, will be regulated individually by a separate legislation.

After almost a decade of preparation and drafting (initial studies were carried out as early as 2007), the law will now be gradually phased in with specific regulations and targets (collection and recovery rates) to be published in 2020 and in years to come:

- The decree for tyres (DS N° 8/2019, Ministry of Environment) is approved in principle, but is still under review by the Comptroller General of the Republic of Chile.¹⁰
- The preliminary draft¹¹ of the decree covering **packaging** passed through public consultation in 2019.¹² The Decree was finally approved by the Council of Ministers in May 2020 to then enter the Chilean General Accounting Office.¹³
- The decrees for lubricant oils and batteries are still be drafted; preliminary drafts are expected shortly.

⁸ <https://www.leychile.cl/Navegar?idNorma=1090894>

⁹ Registro de Emisiones y Transferencia de Contaminante, <https://retc.mma.gob.cl/>

¹⁰ Approved published decree: <https://rechile.mma.gob.cl/wp-content/uploads/2020/01/DS8-REP-neumaticos-f.pdf>

¹¹ Draft decree: <https://rechile.mma.gob.cl/wp-content/uploads/2019/06/58-RES.EXENTA-0544-APRUEBA-ANTEPROYECTO-DE-DECRETO-SUPREMO-EYE.pdf> Proceedings: <https://rechile.mma.gob.cl/envases-embalajes/>

¹² Publication deadline extension: <https://rechile.mma.gob.cl/wp-content/uploads/2020/01/resolucion-1443.pdf>

¹³ <https://www.paiscircular.cl/consumo-y-produccion/decreto-final-metas-envases-y-embalajes/>

EPR Decree for Packaging

On May 30, 2019, the **draft of the decree covering packaging**, associated with the EPR Law N° 20.920, was published. Its key provisions included:

- Provision for 5 categories of materials, each with separate targets. These categories are beverage cartons, metal, paper and card, plastic and glass.
- Different targets for industrial packaging and packaging for private consumers. The targets for industrial packaging cover metal, paper and card, and plastic only.
- Increasing rates over eight years.
- Producers of industrial and commercial packaging can choose whether to take responsibility for their obligations individually or to do so collectively by participating in the PRO. If they do so individually, industrial consumers must report the quantities of waste they recover directly to the Ministry's registration system (RETC). If the responsibility is joint, companies can enter into agreements with a PRO, which assumes their responsibilities and will carry out the necessary activities on their behalf. The law also provides for a third arrangement whereby the producers remain responsible for recovering waste, but the registration and the records are done by the PRO.
- Micro companies¹⁴ are exempted from any obligations under the law; they are not even required to provide information. There are also exceptions for small producers (less than 300kg of packaging/year), but they must provide information on the quantity of packaging they introduce to the market.
- For household packaging, each district/municipality can only be served by one system operator. If there is more than one system operator, it is defined which areas of the country each system operator should operate in to ensure the whole country is covered.
- A kerbside collection service must be provided, and must be expanded over time. It should cover 10% of the population initially, but this figure will eventually rise to 85% of the population.
- The PROs have to report annually. The report must be audited by technical bodies authorised by the Superintendence of the Environment.
- The PROs are obliged to integrate waste pickers into the system.

Objectives

The preliminary objectives that have already been announced will allow Chile to go from the current average of 12.5% of household packaging being recycled to 60% by 2030. The decree establishes specific recycling targets for each material by 2030 as follows:

- Beverage cartons (60%),
- Metal (55%),
- Paper and cardboard (70%),
- Plastics (45%),
- Glass (65%).

As for industrial waste, 70% of metals will have to be recycled. The figures for paper and card and plastics will be 85% and 55% respectively.

¹⁴ Ley No 20.416, Art. 2: Microenterprises are defined as enterprises whose annual income from sales and services and other business activities did not exceed 2,400 unidades de fomento (UFD) in the previous calendar year. As of 24 March 2020, this corresponded to €73,445.

The decree defines two quotas – one collection quota and one recycling quota. However, the decree defines that only the recycling quota must be met.

Collection system

Considering that these collection targets must be met, the decree establishes a specific scheme for the collection of household packaging waste using a kerbside system. This means householders will no longer have to dispose of waste at central recycling drop-off points (bring system).

Collection (Article 44): Requirement for separate delivery at source and selective collection of waste:

System operators must carry out household collection of waste, allowing the separate collection of waste types and thus allowing waste to be delivered separately to the waste treatment plants. The collection system must cover a certain percentage of the country's total population. This percentage will increase annually up to 85% of households. The kerbside collection system should be uniform throughout the territory of Chile, and may vary only in terms of population density. This system and any exceptions from it must be set out in sufficient detail in the management plan. The bag used for segregating household waste at source must be yellow.

System operators

Leaving aside the option for companies to carry out their responsibilities on an individual basis, it is, in principle, possible for more than one PRO to operate simultaneously. In this respect, a distinction is made between two categories of system operators:

- 1. PROs with less than 20 obliged companies contributing to the system must meet their targets from packaging waste introduced to the market by the obliged companies only.** The same rule applies to obliged companies carrying out their responsibilities individually.
- 2. PROs with more than 20 obliged companies making contributions can meet their targets using any packaging waste, as long as the packaging is in the same sub-category as the packaging the relevant companies introduce to the market.**

Each system operator must disclose the obliged companies among its members and how much packaging each of these companies introduces to the market for consumption in Chile. All systems must operate on a non-profit basis.

Since there are different targets for household and industrial packaging, there will likely be separate systems for each of these waste types (although this is not a legal requirement). Given that PROs with less than 20 participants are only responsible for their own waste, and that only one system is allowed to operate in each district, it is unlikely that multiple parallel systems will be set up for household packaging in Chile.

To be approved, each PRO must submit a management plan giving various details, including a description of how their system is financed. Each system operator is also required to submit an annual report which sets out how the fees received relate to the disposal costs they have incurred and account for any gaps in the calculations. Moreover, PROs are required to submit a pro-forma guarantee of compliance with the targets and other associated obligations.

The targets will be phased in from 2022 onwards in order to leave enough time for companies to establish PROs and the relevant entities responsible for ensuring compliance with the provisions of the law. Failure to comply will carry fines up to 10 million US dollars.

Obliged companies will be offered incentives for reducing waste through projects that focus on reducing waste amounts in the first place. The obliged companies involved in these projects will be paid subsidies in proportion to the effective decrease in the quantity of packaging introduced to the market.

Currently, two PROs are set up. The first PRO was established by the Food and Beverage Association AB Chile even before the preliminary draft of packaging decree passed through public consultation in June 2019. **This system operator will cover both household and industrial/commercial packaging waste for a range of different packaging applications.** Currently, this system operator has 26 obliged national and international members, including large FMCG companies such as Coca-Cola, Unilever and Nestlé. This PRO is currently in the process of being certified as a non-profit, industry-led corporation, and a general manager has already been appointed.

The first activities undertaken by this system operator focused on corporate governance, cost estimates, working with the environmental authorities and setting up a pilot project involving various actors in the recycling chain, such as informal recyclers, local authorities, and collection and recovery managers. A pilot recycling plan was formally launched in the Providencia commune of the Santiago Metropolitan Region in September 2019, which eventually will expand separate waste collections services for packaging waste covering 90% of all properties in Providencia. The experience and data gained from this project will serve as the basis for a large-scale roll-out of the system, which will be required to operate from 2022 onwards.

A second PRO collecting non-household waste exclusively is also being established in parallel. In November 2019, the Sociedad de Fomento Fabril (SOFOFA) officially presented its system operator. It is focused on industrial and commercial packaging, which is a priority category under the EPR Law. This explains why SOFOFA has been playing an active role in planning since the regulations were first suggested, and has continued to do so into the implementation phase. SOFOFA is a non-profit association of companies and unions linked to the Chilean industrial sector. It counts around 4,000 companies, 48 sector associations and 22 regional business unions among its members.

The development of the PRO is facilitated by the following organisations:

- SOFOFA Hub: A working group made up of companies focusing on the circular economy. The working group sets the posture of the system operator and the guidelines under which it operates.
- Rigk Chile: A German PRO for industrial packaging, plays an active role on technical and operational issues, along with Valipac.
- Valipac: A Belgian industrial packaging PRO. Plays an active role on technical and operational issues, along with Rigk.
- Carey & Cía: A Chilean law firm providing legal advice for the system operator.

So far, this PRO has only 4 members. Due to the small number of partners currently involved, it is not yet self-financing. Despite this, the system operator has drawn up an activity plan including, among other things, a pilot project for the collection and recovery of industrial packaging waste. This project will not start until the final packaging decree has been promulgated.

Roles and responsibilities of other stakeholders

Waste management companies must prove that they are successfully utilising the resources contained in the waste they process. Companies that process waste with no positive market value are obliged to certify that there is a demand for their products derived from the waste.

The municipal authorities covered by the system operator's collection scheme for household packaging waste must commit to collect waste source separated to waste collection plants and encourage recycling into the appropriate municipal ordinance.

Waste pickers who are registered on the national register (RETC) will be able to participate in the waste management system with a view to reaching the targets set in the decree. For registration purposes, these waste pickers must be certified under the National System of Certification of Labour Competences established in Law No. 20 267. Separate tenders must be submitted for collection and recycling associated with the EPR system; local authorities and informal recyclers have preferential status in the tender procedure. A PRO is required to draw up the bidding



regulations under which waste pickers will be selected for collection and recovery services available free of charge. In addition, the system operator's Inclusion Plan (Article 13) must state the mechanisms and tools to be used for training, financing and inclusion of these waste workers.

The Ministry of Environment has also released a **Policy for the Inclusion of Waste Pickers 2016-2020**. This policy includes a work plan to **promote the social, economic and environmental inclusion of informal workers** through training and certifying their labour skills and, by extension, promoting their formal participation in the EPR system as authorised waste managers. Another aim of the plan is to make their important role in the waste value chain visible. In order to implement this policy, an Operations Committee has been set up, chaired by the Under Secretary of the Ministry of the Environment. An additional collaboration agreement is in place with the country's sole organisation for informal recyclers, the National Movement of Waste Pickers of Chile (MNRCH AG).

All consumers will be obliged to deliver packaging waste to the respective PRO, subject to the underlying conditions set and published by the system operator.

Inspection and sanction mechanisms will be run by the Superintendence of Environment.

The targets and other associated obligations will take effect 24 months after the publication of the final decree. All other provisions will take effect immediately on publication.

Additional financing

The Extended Producer Responsibility Law also contains provision for a **recycling fund**, which is intended for recycling projects run by municipalities or associations. A total of CLP 344 million (about 450,000EUR) was distributed to 33 projects in 2018, and in 2019 a total of CLP 502 million was assigned to 6 projects. Funds for 2020 will be focused on pilot models for the selective collection of packaging waste and certifying the skills of waste pickers. The recycling fund is not currently being used for waste infrastructure purposes.

An important individual project financed with state funds, is known as 'Santiago Recicla'. The project foresees the construction of 22 drop-off recycling points in the Santiago Metropolitan Region, at a cost of CLP 4 billion (about 5.2 million EUR), and corresponding education and awareness campaigns at a cost of CLP 900 million (about 1.2 million EUR).

Information correct as of June 2020

Further reading

Official pages of the Ministry of the Environment:

mma.gob.cl/economia-circular

mma.gob.cl/economia-circular/ley-de-fomento-al-reciclaje/

www.leyrep.cl/

rechile.mma.gob.cl/

Principal legal references

EPR Law 20.920/2016. <https://www.leychile.cl/Navegar?idNorma=1090894>



Draft Packaging Decree 2019. <https://rechile.mma.gob.cl/wp-content/uploads/2019/06/58-RES.EXENTA-0544-APRUEBA-ANTEPROYECTO-DE-DECRETO-SUPREMO-EYE.pdf>

Search for advances in the EPR decree on packaging: <https://rechile.mma.gob.cl/envases-embalajes/>

Library of the National Congress of Chile, waste legislation.

<https://www.leychile.cl/Consulta/listaresultadosimple?cadena=residuos>

National Waste Policy 2018-2020. http://santiagorecicla.mma.gob.cl/wp-content/uploads/2020/02/Politica-Nacional-de-Residuos_final-V_sin-presentacion.pdf

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