

ITI Comments on Chile's Proposed Regulation for the Transboundary Movement of Waste

July 5, 2023

The Information Technology Industry Council (ITI) submits these comments and recommendations on behalf of the information, electronics, and communications technology (ICT) sector with respect to the proposed Regulation for the Transboundary Movement of Waste (the Regulation). ITI represents 80 of the world's leading ICT companies from all corners of the technology sector. We are the premier global advocate for technology, representing the world's most innovative companies. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers with the broadest perspective and thought leadership from technology, hardware, software, services, and related industries.

The global ICT sector continues to drive a more sustainable circular economy for electrical and electronic equipment (EEE) in accordance with the Basel Convention, as well as the transboundary movement of waste electrical and electronic equipment (WEEE) for responsible and environmentally safe management.

We are committed to engage constructively in the final integration of the Regulation to drive local improvements with global impact on environmentally sound management and material recovery of WEEE, and at the same time, foster the circular economy through repair and refurbishment.

The ability of companies to safely and efficiently move used EEE and WEEE around the world for repair, refurbishment, and reuse is critical to reducing waste and promoting the circular economy, as are actions aimed at recycling, recovering, and reuse of parts and components.

ICT companies have invested heavily in facilities all over the world to enable the repair, refurbishment and reuse of electronic products, as well as their efficient and safe recycling.

Similarly, promoting the circular economy for electronics requires that Parties to the Basel Convention (such as Chile) take steps to improve legal clarity so that waste that can be recovered in other countries safely and efficiently through transboundary shipments, resulting in the recovery of materials in an environmentally sound and effective way.

The ICT Industry applauds the efforts that have been made over the years to integrate a version of the Regulation in line with the provisions of the Basel Convention.

However, we consider that the following points should have special attention and modification, so that they do not inhibit the recovery of waste and components in other countries that have better

infrastructure and capacity. This will allow for a sustainable circular economy rather than contradict the goals and purposes of the Basel Convention.

Please see our comments below on: (1) How to evidence the environmentally sound management of waste; and (2) export of used EEE products.

1. **How to evidence the environmental management of waste.**

Article 4 of the proposed Regulation provides that *"the export of hazardous waste for recovery shall only be permitted where it is established that such waste will be subject to environmentally sound management by a consignee, authorized in accordance with the applicable regulation, which is located in a country which is a member of the OECD, of the European Community or Liechtenstein"*.

Such a requirement is consistent with what is currently established by the Basel Convention.

However, what is proposed to prove the environmentally sound management of waste is that *"the exporter must present background information that proves that the legislation and regulations in the country of destination have standards equal to or higher than Chile in terms of air emissions, effluent discharges, hazardous waste management and the presence of hazardous substances in workplaces."*

This requirement will not only include the recovery of hazardous waste, but also will include all waste that is subject to the hazardous waste control procedures. Thus, this requirement¹ should be met for all wastes in Annex I, Annex II, Annex VIII, waste not identified in Annex IX, and wastes identified as hazardous in at least one country involved.

This was reinforced by the provision referring to the power of the Ministry of the Environment (MMA) to object to the transboundary movement of waste, in the event that it has not been proven that the export will be carried out through environmentally sound management under the terms of Article 4, that is, that there has been a regulatory background check to ensure that the country of destination has standards equal to or higher than Chile.²

It should be noted that this paragraph was incorporated by the MMA after the Comptroller General of the Republic (Comptroller) represented the proposal dated September 1, 2020. The declaration of illegality, of the Comptroller's Office, stated that the content of the proposal could not be attributed to the signatories because it had undergone multiple modifications; however, the MMA, in relation to the form of accreditation of "environmentally sound management," still incorporated substantive modifications.³

The incorporation of the accreditation mechanism of "environmentally sound management" incorporated by the MMA in this instance does not correspond because: **(i)** it is a mechanism that according to Law No. 20,920 that "Establishes Framework for Waste Management, Extended Producer Responsibility and Promotion of Recycling" ("REP Law"), requires prior public consultation; **(ii)** its

¹ The foregoing follows from article 4, paragraph 2; and Article 21 letter a) numeral 5, in relation to the Article 10 of the proposed Regulation.

² Article 7, proposal for a Regulation.

³ Office of representation E32398/2020, issued on 09/01/2020 by Comptroller Jorge Bermúdez Soto.

scope exceeds the content of the Basel Convention, and does not ensure environmentally sound and efficient management; and, finally, (iii) in practice, unjustifiably hinders the movement of waste.

(i) Need for prior public consultation.

ITI considers that the introduction of this mechanism to ensure environmentally sound management corresponds to one of the instruments regulated in Article 4 of the REP Law, and therefore should be submitted to a special Supreme Decree, which has: (a) *A general analysis of the economic and social impact;* (b) *A consultation with competent public and private bodies, including grassroots recyclers;* and, (c) *A public consultation stage, which will last at least thirty working days.*

This is due to the fact that Article 4 of the REP Law states that certain instruments aimed at preventing the generation of waste and/or promoting its recovery, must be submitted to the processing of a Supreme Decree with the particularities already referenced. Among these instruments are: "*Mechanisms to ensure environmentally sound waste management*".⁴

(ii) Its scope exceeds the content of the Basel Convention and does not ensure environmentally sound management.

Such a measure not only exceeds the Basel Convention, but also contravenes its principles and objectives.

While it is true that the Convention has as a principle that hazardous wastes and other wastes should be treated in the country that generated them, and it is therefore positive that requirements are imposed for their movement, this principle must be complied with as long as it does not conflict with the environmentally sound and efficient management of waste.

Indeed, the preamble to the Convention stated: "*Convinced that, to the extent consistent with environmentally sound and efficient management, hazardous wastes and other wastes should be disposed of in the State in which they originated*".⁵

As an EEE industry, we believe that this provision does not allow for the environmentally sound management of waste in practice. This is because the practical fact that a country lacks a certain regulation does not imply that management is less efficient. Alternatively, the fact that a state has a standard similar or superior to Chile does not ensure that management is more efficient and rational.

Additionally, the standards of quality for air emissions, water, soil, are species-specific, which means that they are developed and applied for a particular environment. Therefore, valid comparisons could not be established between different countries, which in turn implies that this criterion is also not able to ensure that waste management is environmentally sound.

Thus, this normative incorporation fails to satisfy the standard of environmentally sound management, since it does not focus on the destination facilities or that the best available techniques are implemented for each waste.

⁴ Article 4, letter e of the REP Law.

⁵ Basel Convention, Preamble, p. 5.

In this context, it is important to bear in mind that, to date, many countries within the region, including Chile, have limited capacities and infrastructure for the rational and efficient recovery of WEEE. Therefore, when defining a recipient for waste management it is important to have as a main criterion the rational and efficient management of waste, and not, the existence of certain standards. Otherwise, it would be imposing obstacles to efficient recovery in sites where there are already greater technological advances and infrastructure for the use and recovery of materials.

These circumstances will bring regulatory requirements whose impacts are not being quantified, thus causing shipments of almost all waste for recovery and disposal operations to encounter significant obstacles since each country has autonomy to regulate air emissions, effluent discharge, hazardous waste management and the presence of chemical substances in different ways, without necessarily being less, equal, or superior to Chile.

(iii) The Basel Convention ensures environmentally sound management.

It is considered for the purpose of this regulation, to ensure the environmentally sound management of waste, that the same is currently verified and well covered under the provisions of the Basel Convention.

First, the waste will be sent to certain countries which already have specific legal provisions for waste management and handling; they are OECD member countries in most of the cases, or even members of the European Community or Liechtenstein (Article 4(1) as included in the proposed Regulation).⁶

Second, any movement of waste must comply with strict notifications, acceptance, and consent procedures that will be carried out between the countries involved. They must specify the management that will be carried out with respect to each waste that is being delivered.

It is important to bear in mind that the Basel Convention in its original conception has clear and effective rules to achieve the environmentally sound management of waste. In particular, the acceptance and consent requirements for the shipment of waste to other countries, as well as the OECD Rules (OECD/0266), make it possible to ensure this proper handling.

The State of export shall not permit the initiation of the transboundary movement, inter alia, until the State of import has confirmed, in writing, consent to receive as well as confirmation of the existence of a contract between the exporter and the consignee stipulating that the waste in question shall be managed in an environmentally sound manner. These requirements are contemplated under **Annex V A of the Basel Convention**. The Regulation contradicts these provisions.

To ensure compliance with the provisions of the authorization, the exporter must accompany a guarantee of compliance to cover the costs incurred if the transboundary movement cannot be carried out according to the authorization, or when the provisions of the Regulation or the applicable laws in force, are not complied with.⁷

⁶ In accordance with the Prohibition Amendment.

⁷ Proposal for a Regulation, Rule 24.

This allows the MMA to determine in advance whether the management will be environmentally sound and efficient.

- (iv) There is no clarity on its practical application.

Finally, this additional requirement does not provide legal certainty as to its practical application.

It is not considered that the rules that regulate the matters of air, water, air, health of the population, are specific to each regulated environment, and therefore valid comparisons cannot be established without a previous methodology that makes the necessary adjustments.

Additionally, it is not clear whether the movement of a type of waste should prove the normative standard of all materials. As an example, if you need to move plastic pellets for recycling operations (Annex II), then the question arises if the normative standard should be accredited with respect to all the criteria contained in the standard (*"air emissions, effluent discharges, hazardous waste management and the presence of hazardous substances in workplaces"*) or, will the requirement depend on the type of waste to be moved.

Based on all the foregoing considerations, we respectfully request to **eliminate this proposal in order to avoid regulatory burdens that would undoubtedly paralyze the movement of waste and the fulfillment of circular economy goals that are sought both in national regulations and in the commitments that companies in the ICT sector are assuming.**

In conclusion, we hereby request to eliminate articles 4 paragraph 1, second part; Article 7, paragraph 7; and article 21 letter a) numeral 5.

If there is no agreement as to the proposed elimination, we hereby request to submit it to the special procedure established in the REP Law, to ensure citizen participation in environmental decision-making of public interest.

2. Export requirements for used EEE constitute a disincentive for their reuse.

Regarding the provisions of Article 11 of the Regulation which refer to the procedure for the control of used electrical and electronic equipment, we highlight the following concerns:

- (i) Exceeds the Basel Convention and Technical Guidelines

Both the proposed Regulation and the Basel Convention agree that EEE intended for failure analysis, direct reuse, or repair or reconditioning for reuse will be classified as appliances/products, and not as waste.

However, we point out that the obligation to submit to the MMA a report of the results of the failure analysis, repair or reconditioning as well as a report of the residues (which may have been generated in these processes and the documentation and contracts that prove it), exceeds what is established

in the current text of the Basel Convention, and the "Technical Guidelines on Transboundary Movements of Electrical and Electronic Waste and Used Electrical and Electronic Equipment":⁸

In addition, it must be considered that the main objective of both the Regulation and the Basel Convention, is to regulate waste and not equipment or products as such, so it undoubtedly exceeds the objectives of these normative documents.

(ii) Threatens the decrease in waste generation

It is worth noting that this additional requirement derives in a measure that increases regulatory, procedural, and economic burdens that contravene the fulfillment of specific objectives of achieving a decrease in waste generation, and a true circular economy in the ICT sector. The ICT Sector is investing significantly in efforts to identify environmentally appropriate alternatives to extend the useful life of products through repair, refurbish or reuse in places where there is technical and human capacity.

In fact, this requirement artificially creates regulatory disincentives to ensure that used EEE can have a new useful life of shorter cycles through repair, failure analysis, or reconditioning to be reused. Also considering that there could be other types of preventives to ensure that used EEE products will be in fact delivered for failure analysis refurbish or repair, and not deviated from those purposes.

Therefore, it is necessary to avoid confusing the concepts to eliminate the imposition of unnecessary regulatory burdens on the transboundary movement of used products with the potential to prolong their useful life, and that aims to reduce waste generation in a manner consistent with the goals of transition to the circular economy in the country and worldwide.

For this reason, the ICT industry respectfully requests that in the spirit of harmonizing the content of the Regulation with what is currently regulated by the Basel Convention mainly, **the requirement to submit reports of results of failure analysis, repair or refurbishment, and waste management be eliminated.** This requirement is not included in the Basel Convention or in the OECD Rules, nor in other countries in the Latin American region, who have also adopted both instruments and have clearly differentiated the control of WEEE vs. used EEE.

Thus, through this document, we request that you review the comments that we submit hereby for your consideration to be modified, in such a way that it seeks to provide legal certainty in the ICT sector and the objectives it seeks towards a sustainable and effective circular economy, and thus avoid regulatory obstacles and legal uncertainty that currently presents the text proposed in the articles we indicate.

⁸ Technical Guidelines on transboundary movement of electrical and electronic waste and used electrical and electronic equipment, with regards to the distinction between wastes and non-waste materials under the Basel Convention.

Thank you for your attention to our recommendations and feedback. We would be happy to receive a response in writing or engage via teleconference to discuss our comments further.

Sincerely,



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