



Comisión  
Nacional de  
**Evaluación y  
Productividad**

# REPORT

## Economic Reactivation and Long-Term Growth

2021

## **Economic Reactivation and Long-Term Growth**

Over a year after the beginning of the pandemic caused by the Covid-19 virus, countries are at different stages of economic recovery. During 2020, Chile experienced substantial impacts, such as a decrease in employment and a contraction of production. Currently, although the consensus among analysts indicates that the Gross Domestic Product will increase during 2021 - mainly due to the modest comparison base of the previous year - it is not a reason to neglect the necessary reforms to increase productivity, the ultimate source of economic growth in the medium and long term. Therefore, the National Productivity Commission (CNP) once again emphasizes the urgency of adopting measures that help boost the economy in the short term while translating into higher growth rates in the future.

This document contains a set of recommendations for the public sector, which have emerged from studies carried out by the CNP in the past. These proposals complement those already highlighted by the CNP in June 2020 ([www.comisiondeproductividad.cl](http://www.comisiondeproductividad.cl): *Twelve Recommendations for Economic Recovery*). They include modifications to State processes that currently hinder investment unnecessarily in various sectors and improvements in areas where public institutions' management could be more efficient. Likewise, due to the significant deterioration in the female labor force participation rate over the past year emphasizes the need to encourage the return of women to work.

All the recommendations in this document originated from reports the CNP has produced since its creation in 2015. Each CNP's study provides guidelines to promote productivity and the ability to grow sustainably. The measures highlighted here aim to complement others already implemented by the authorities to address effectively the complex scenario caused by the health crisis.

The selection of the proposed measures considers their suitability in terms of their effects on productivity and economic activity and emphasizes the feasibility of their expeditious implementation. For this reason, 11 of the 12 measures are administrative, requiring modifications at the decrees, resolutions, or instructions level. Only one of them - universal

daycare - needs to go through the approval of a bill, which has been under consideration in Congress for several years and is now in an advanced stage.

This document also complements the multiple measures recommended by various experts from different organizations and instances, motivated by increasing the well-being of the country's inhabitants.

### **Recommendations:**

#### **1. Expand the use of cost transfer mechanisms to users through i) external collaborators and ii) direct cost allocation for procedures.**

The use of external collaborators and direct cost allocation for procedures are valuable mechanisms to increase public service efficiency, as well as transparency and fairness in processing permits necessary for investment. These schemes have been successful in Chile and other countries.

In the study Regulatory Quality in Chile: Regulatory Review of Strategic Sectors, the CNP recommended modifying the corresponding regulations to implement the use of external collaborators and direct cost allocation for the following permits:

- Permit for the construction and operation of tailings deposits (Sernageomin).
- Permit for archaeological, anthropological, and paleontological excavations (Council of National Monuments).
- Permit for channel modifications, permit for defense and regularization works of natural channels, and acceptance of major hydraulic works (General Water Directorate - DGA) (Bill 11747-03). Supreme Decree 248/2006.

**Study:** Regulatory Quality in Chile: Regulatory Review of Strategic Sectors

**Implementation:** Regulatory modification through decrees.

**Responsible:** Ministry of Mining, Ministry of Culture and Arts, Ministry of Public Works.

## **2. Incorporate traceability and standardized criteria in permit processing.**

Tracking the status of procedures is critical to the proper functioning of the public sector. Traceability in processing permits required for investments helps transparency and reduces uncertainty for applicants. At the same time, it allows for greater efficiency in managing the various services that must grant them.

The CNP recommended issuing a presidential instruction incorporating traceability in permit processing. For this, the respective public services must map their processes, identifying critical routes and areas for improvement, as well as the resources required to carry out this work. Based on this, we recommend transforming the actual processing times into a monitorable indicator and, likewise, define, in an effort led from the main level, the criteria that regional services will use to grant permits that have relevant degrees of discretion by the issuer. Additionally, if it is necessary to differentiate by regional conditions, which must be explicitly stated and justified.

**Study:** Regulatory Quality in Chile: Regulatory Review of Strategic Sectors

**Implementation:** Presidential instruction.

**Responsible:** Office of Sustainable Project Management, Ministry of Economy.

## **3. Modify the structure of the Environmental Qualification Resolution to facilitate evaluation processes.**

Currently, the Environmental Qualification Resolution (RCA) structure restricts projects' adaptability to circumstances specific to a dynamic environment, from changes in the surroundings to technological improvements. This provides room for improving evaluation processes in terms of order and simplicity.

The CNP recommends modifying the Regulation of the Environmental Impact Assessment System (RSEIA) to incorporate the hierarchy of environmental components in the mandatory requirements of an RCA to facilitate evaluation processes. For this purpose, a chapter should be established in the RCA that summarizes and classifies ecological commitments according

to their nature, defining at least categories representing those considered essential, relevant, or secondary, which should be monitored and sanctioned in a differentiated manner.

**Study:** Regulatory Quality in Chile: Regulatory Review of Strategic Sectors

**Implementation:** Regulatory modification through a decree.

**Responsible:** Ministry of the Environment

#### **4. Restrict the conditioning of sectoral and/or municipal permits to the presentation of Pertinence Consultation.**

Practically every investment project is susceptible to causing environmental impacts. However, there is often a lack of clarity regarding the specific cases under which a project should be subject to the Environmental Impact Assessment System (SEIA). Project proponents can voluntarily resort to the SEA with a pertinence consultation regarding entry into the SEIA. The consultation is cost-free for the proponent, and being clarifying in nature is not binding either. The interpretation of its effect is so complex that two instructions and one ruling have been issued to define it. Two problems arise:

- a. There needs to be more clarity regarding which projects or modifications to projects should enter the environmental assessment (half of the consultations respond to this reason). This is because the concepts that define the criteria do not have thresholds or objective indicators and use terms with ambiguous definitions such as "effect," "substantially modify," or "alter."
- b. Some Services arbitrarily condition the granting of their sectoral permits on the resolution of the consultation.

The CNP recommended modifying Article 26 of the RSEIA to explicitly restrict the conditioning of sectoral and/or municipal permits to the presentation of a Pertinence Consultation.

**Study:** Regulatory Quality in Chile: Regulatory Review of Strategic Sectors

**Implementation:** Modification of the RSEIA through a decree.

**Responsible:** Ministry of the Environment

## **5. Infrastructure Planning**

In the study Productivity in the Construction Sector, the CNP concluded that efficiency in the construction of public works could increase significantly through a series of measures. Evidence indicates that projects of comparable scale are completed more efficiently when the design and execution stages are integrated, as opposed to being treated as separate processes, resulting in shorter overall timeframes. Therefore, the CNP proposed the need to modify the document that dictates the Norms, Instructions, and Procedure for the Investment Process (NIP) to establish two stages associated with resource application in the National Investment System:

- Pre-investment, and
- Design and Construction.

Additionally, in the Design and Construction stage, there should be a milestone at the end of the design phase that allows for an evaluation of whether the projected execution costs remain within an acceptable range compared to the estimates in the pre-investment stage. If not, it is possible to consider postponing or terminating the project.

**Study:** Productivity in the Construction Sector

**Implementation:** Modification of the NIP through an official document.

**Responsible:** Ministry of Finance, Ministry of Social Development and Family.

## **6. Quality of public works designs**

Currently, the execution of public works is often hindered and significantly delayed due to deficiencies in their design. Therefore, the CNP recommended mandating, through a resolution from the Ministry of Finance, that the executing units of the National Investment System (SNI) develop standards regarding the minimum requirements associated with developing their projects. This includes specifying and setting the level of definition for each phase, the methodology, and accuracy in cost estimation and work schedule.

The following suggestions are proposed:

- Gradual implementation at the level of each executing unit, starting with complex projects (e.g., hospitals, airports, and reservoirs).

- Having the support of expert consultants (companies, consortia, or universities).

**Study:** Productivity in the Construction Sector

**Implementation:** Issuance of a resolution.

**Responsible:** Ministry of Finance

## **7. Public works bidding specifications**

The quality of public works bidding processes directly affects the costs and timelines involved in their construction. The CNP identified a series of deficiencies in the bidding specifications that create problems in subsequent stages, from design to actual investment.

The CNP recommended:

- a. Incorporating in the administrative bidding specifications for contracts of preliminary studies and engineering projects before execution (or standard specifications) the requirement of a construction-experienced professional. Depending on the type and complexity of the work, specifying different levels of dedication to the contract is suggested.
- b. Mandating, through instruction, the units responsible for leading projects to identify and list in the bidding specifications and complementary annexes, if applicable, all the necessary documents for the proper preparation of bids.
- c. Mandating, through instruction, the creation of a digital repository available on the website of each executing service containing the most frequently asked questions during the bidding process, organized by topic. Additionally, modify Supreme Decree MOP 48, Supreme Decree MOP 75, and the Concessions Regulation to establish virtual and anonymous question resolution meetings for consultancy and high-scale execution projects, as well as all concessioned projects. Lastly, reflect real-time corrections made to the specifications and make them publicly available.

**Study:** Productivity in the Construction Sector

**Implementation:** Instructions and regulatory modifications through a decree.

**Responsible:** Ministry of Public Works

## **8. Public works contracts**

The contracts for the execution of public works govern the relationship between the principal and the contractor. Deficiencies in these contracts eventually manifest as poor incentives for the involved parties.

Based on the findings of the study Productivity in the Construction Sector, the CNP proposes:

- a. Incorporate in the administrative bidding specifications for public works execution contracts differentiated risk clauses and, eventually, early exit clauses in the face of contingencies that have a higher occurrence rate to reduce risks for efficient contractors in unforeseeable or subsequent circumstances (lengthy permits, environmental and social issues, etc.).
- b. Incorporate the figure of technical panels or experts established through a formal written agreement, signed by the parties to a contract, to address and resolve disputes that may arise between them from the beginning of the contract until its execution and completion.
- c. Include an arbitration clause for dispute resolution to reduce costs and timelines of litigation before ordinary courts.

**Study:** Productivity in the Construction Sector

**Implementation:** Regulatory modification through a decree.

**Responsible:** Ministry of Public Works

## **9. Service Change**

There may be delays in public investments due to coordination failures within the government. An example of this is the problems that arise when implementing an investment requires relocating networks that provide certain "basic services," such as electricity, water, or gas.



The CNP has found deficiencies in the procedures for service changes that, at times, result in cost increases and construction delays. Therefore, it proposes modifying the regulations related to the supervisory and sanctioning powers of the respective superintendencies to specify that they can exercise these functions when service changes affect or jeopardize the services' quality, continuity, regularity, and safety.

**Study:** Productivity in the Construction Sector

**Implementation:** Modifications, through a decree, to the regulations governing the respective basic service concessions.

**Responsible:** Ministry of Public Works (SISS), Ministry of Energy (SEC)

## **10. Expropriations**

Often, the execution of public works involves the need to expropriate privately owned land. In principle, this procedure is governed in a way that allows for the development of public interest investments without violating private property rights.

The CNP has found room for improvement in efficiency and respect for the principles involved regarding regulating expropriation processes. These are:

- a. Incorporate the review and updating of the lots included in the expropriation project at the time of application for execution in the Sectorial Information Requirements (RIS).
- b. Modify DL 2.186 to:
  - i. Make the list of experts national (Article 4, paragraph 1, DL 2.186),
  - ii. Reduce the requirement of 6 professionals per specialty (for example, decrease it to 3) (Article 4, paragraph 2, DL 2.186),
  - iii. Specify technical requirements associated with the list through regulations (for example, establish detailed mechanisms for list review/updating),
  - iv. Establish specific criteria and formats for appraisals through regulations, incorporating adaptable variables based on periodic recommendations from a technical body (e.g., a group of experts),

- v. Establish a procedure with defined deadlines where both the expropriating entity and the expropriated party can request clarifications regarding the appraisal without compromising the independence of the expert commission.
- c. Evaluate inter-institutional agreements with the CDE (Corporation for the Defense of the State) to make the process more efficient in projects that generate high temporary workloads (e.g., the case of the Metro).

**Study:** Productivity in the Construction Sector

**Implementation:** Modifications through a decree.

**Responsible:** Ministry of Public Works.

## **11. Management of public works contract modifications**

There are various legitimate reasons why public works contracts are often modified after they have been signed. While contractual conditions should be able to change to reflect unforeseen changes in the constraints of public investments, contract modifications must be carried out with significant safeguards, as they can involve perverse incentives that result in cost overruns and ultimately harm the public interest.

To improve the management of contract modifications, the CNP recommended:

- a. In line with numerous rulings from the CGR (General Comptroller's Office), modify Article 105 of Supreme Decree MOP 75/2004, explicitly stating that the execution of new or extraordinary works in series contracts at unit prices is associated with the use of materials with characteristics different from those specified or contained in the background information that serves as the basis for the contract. This complements definitions 33 and 34 of Article 4 of the Decree to align with Articles 102 and 105.
- b. Remove the signature requirement of the President of the Republic in the Supreme Decree. Add matter No. 12 to Article 1, number IV, of Decree 19/2001 from SEGPRES (General Secretariat of the Presidency), delegating the signing of the contract modification Supreme Decree to the Minister of Public Works on behalf of the President.

- c. Improve the administrative process of modifications in the Directorate General of Public Works (DGOP) and the Directorate of Concessions (DGC) through:
  - i. Through a resolution, mandate the implementation of traceability for all stages of modifications, allowing access to all parties involved, including contractors.
  - ii. Modify Supreme Decree MOP 75 and Supreme Decree MOP 108 to incorporate maximum deadlines for contract modification resolutions in traditional public works contracts. For concessions, impose deadlines for internal procedure stages, including subsequently comprising the procedure in the Concessions Regulation by adding a new article in Title X.

**Study:** Productivity in the Construction Sector

**Implementation:** Resolutions and decrees to modify the corresponding regulations.

**Responsible:** Ministry of Public Works.

## **12. Childcare Centers (Sala Cuna)**

Third-party care is one of the most significant barriers to women's participation in the labor market. This problem has been exacerbated significantly during the pandemic. Currently, only companies with 20 or more female employees are required to provide childcare services (sala cuna). This, on the one hand, leaves women working in companies with 19 or fewer employees unprotected; on the other hand, it may create incentives for companies to limit the number of women they hire.

Therefore, in its study "Women in the Labor World: More Opportunities, Growth, and Well-being," the CNP recommended providing sala cuna services for all children in single-parent households or households where both parents work or study.

The processing of the bill (boletín N° 12.026-13) that includes the replacement of Article 203 of the Labor Code with a system that finances or provides high-quality, free sala cuna services for all children in single-parent households or households where both parents work or study, regardless of the company size or the number of women employed, should be

expedited. Additionally, we suggest the adaptation of the public offering of childcare centers and kindergartens to be compatible with working parents' schedules.

**Study:** Women in the Labor World: More Opportunities, Growth, and Well-being

**Implementation:** Approval of the universal sala cuna bill.

**Responsible:** Ministry of Women and Gender Equality.