



Regulatory Framework on Payment for Environmental Services in

BRAZIL

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EXECUTIVE SUMMARY

Given the growing pressure on ecosystems, many institutions and governments have sought to create incentives to improve the management of environmental assets. In this sense, Payment for Environmental Services (PES) policies have been acknowledged worldwide as a feasible option to meet this target, complementing command and control actions.

In Brazil, many states have been adopting PES regulations, and there is a progressive discussion to adopt national legislation on the topic. Considering this scenario, Imazon and GVCes conducted this study with the purpose to map and analyze PES legislation in Brazil at the federal and state levels, focusing on environmental services associated with forests. We have also analyzed the key federal bills pending in Congress about PES and Reduction of Emissions from Deforestation and Degradation, and the role of conservation, forest management and enhancement of carbon stock (REDD+).

We analyzed 28 legal initiatives on the topic. Eight of them are at the federal level (2 laws, 2 ordinances, and 4 federal bills), and 20 are at the state level (14 laws and 6 ordinances). States covered by those laws are: Acre, Amazonas, Espirito Santo, Minas Gerais, Sao Paulo, Rio de Janeiro, Santa Catarina, and Parana.

As we observed, some of the laws analyzed are specific on PES. Other laws are actually about climate change, but they establish PES programs. There are also cases of rules on water resources that cover that type of payment. Therefore, there is a great diversity of approaches on the topic, particularly at the state level.

We analyzed the norms and federal bills found based on nine components considered fundamental for a robust PES legal framework: institutional arrangement, types of environmental services covered, sources of resources, beneficiaries, land categories that are eligible for the programs, access requirements to receive the benefit, remuneration and calculation criteria, service provision verification systems, and social and environmental safeguards.

Generally speaking, public institutional arrangements prevail, except for Amazonas and Acre states, where they consider the participation of private institutions to manage and raise funds for PES programs. In many cases, management is shared among different public institutions through committees, which may or may not count on the engagement of civil society.

Most instruments analyzed plan for a broad support for environmental services, with a few exceptions targeted at sequestration or conservation of carbon stock. The beneficiaries who are most frequently referred to in the legislation are landowners, family farmers and settlers, as well as traditional communities and indigenous people. However, only a few laws determine the land categories that are eligible for PES projects and actions.

The resource sources established by the legislation vary a lot, but public budget and state funds prevail. Donations, agreements and similar instruments are also allowed, coming from national or international sources. Market instruments have been scarcely mentioned in the laws analyzed, differently from the federal bills analyzed, as all of them include market mechanisms for funding.

Although most laws indicate access requirements to different programs, we did not find any association with more recent environmental regularization practices, such as the Rural Environmental Record (CAR). Only one federal bill mentions the need for a georeferenced property record as an access requirement to a PES program, although it does not specifically mention the Rural Environmental Record.

Additionally, our concern is that very few mention the need for verification mechanisms. Since payments shall be made upon the provision of environmental services, it is critical that some kind of verification is performed to check service delivery.

Another result that grabbed our attention was the insufficiency of socio-environmental safeguards in the regulations. The one that was the most frequently mentioned refers to conservation and biodiversity. The ones that were the least frequently mentioned referred to transparency, participation, and fair and equitable distribution of benefits. However, when we analyze each case individually, there are laws, such as the Incentive System to Environmental Services in Acre (State Law 2,308/2010), that establish all safeguards assessed.

Federal bills showed the greatest number of safeguards, generally speaking. The most frequently mentioned safeguards are related to acknowledgment of land rights, conservation and biodiversity, participation, and economic and sustainable verification. The safeguard on fair and equitable distribution is the least frequently mentioned, even in the federal bills.

The results found in this research refer to different treatments of existing state laws concerning PES and to the lack of a broader law about the topic at the federal level. It is important to elaborate a federal law in order to align the diversity of state laws, besides structuring a robust PES system, thus increasing legal security of actions related to this matter in the country.

To define this national regulation, it is critical to take into account the whole learning process on the topic developed by the states that already count on norms on PES. Thus, we suggest the federal government and the Congress promote public consultation on the topic, inviting representatives of those states to share their experiences. This way, the new law could leverage and enforce positive aspects of existing PES regulation in Brazil.