TECHNICAL NOTE

The Regulation of the Brazilian Emissions Trading System (SBCE) for Greenhouse Gases

November, 2024

INSTITUCIONAL SUPPORT

CLUA – Climate and Land Use Alliance
ETF – Energy Transition Fund
Fastenaktion
Fundação Charles Stewart Mott
Fundação Ford
Fundação Heinrich Böll
Fundar
Fundo Malala
ICS – Instituto Clima e Sociedade
Kindernothilfe
OSF – Open Society Foundations
Oxfam Brasil
PPM – Pão para o Mundo
Rainforest Foundation Norway
UNFPA – Fundo de População das Nações Unidas
Wellspring
WRI – World Resources Institute

TECHNICAL DATA SHEET

Political Coordination
Cristiane Ribeiro
José Antônio Moroni
Nathalie Beghin

Text
Carolina Alves

Translation
Ariane Cieglinski

Graphic Design and Layout
Gabriela Alves

Inesc – Institute of Socioeconomic Studies
Address: SCS Quadra 1, Bloco L, no 17, 13o floor – top floor, Edifício Márcia. Zip code: 70. 307-900 – Brasília/DF/Brazil
Phone: (+ 55) (61) 3212-0200
E-mail: inesc@inesc.org.br
Website: www.inesc.org.br

Through this document, Inesc aims to provide a comprehensive understanding of the carbon market regulation project in Brazil, assessing the differences between the legislative proposals that have been considered in the Senate and offering critical reflections on the content of the text and its potential impacts, from the standpoint of civil society.

The international debate on the carbon market reached a consensus around Article 6 of the Paris Agreement, specifically paragraph 6.4, at the 29th edition of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC). This paragraph delineates the rules, modalities, and procedures for the global carbon market. This aligns with the ongoing dialogue regarding the implementation of a regulated carbon market in Brazil, given that currently the country only operates voluntary markets.

In this context, the topic has been included on the agenda of the federal legislature and is being addressed with urgency to meet market dynamics and international expectations in light of Brazil's climate commitments and its position as the host country of the 30th edition of the Conference of the Parties to the UNFCCC.

The Federal Senate developed a proposal in 2022 (Bill No. 412/2022), which was discussed with various sectors of society in four public hearings, as detailed in the Technical Report published by Inesc in December 2023. The aforementioned bill was forwarded to the Chamber of Deputies, which deemed the matter inadmissible[1]. The Chamber of Deputies, in turn, discussed and approved Bill No. 2148/2015, which gave rise to Bill No. 182/2024. This bill was subsequently sent to the Federal Senate, where it was included on the agenda for November 5th, when the urgency of the matter was approved; however, its consideration was postponed.

Bill No. 182/2024 presents significant differences compared to Bill No. 412/2022, which had been previously approved. One such difference concerns the lack of societal participation in the drafting process, as no public hearings were held to discuss the bill. In the report prepared by Senator Leila Barros, who was also the rapporteur for Bill No. 412/2022, it is clarified that, according to the Chamber of Deputies, despite the merits of the previous bill, there were many areas requiring improvement in order to meet the intended purpose; therefore, its reformulation was necessary, effectively discarding the previous bill and process.

The new bill included 59 amendments and was approved on November 13. Bill No. 182 then returned to the Chamber of Deputies for consideration, where it was received by the board on November 18, approved on November 19, and forwarded for presidential sanction by President Lula.

1 According to Article 191 of the Internal Rules of the Chamber of Deputies (RICD), the first item to be voted on is the committee substitute. If it is approved, the original bill and any amendments submitted to it become inadmissible. In the case of Bill No. 412/2022, the global substitute sub-amendment to Bill No. 2,418/2015 was approved, which means that Bill No. 412 lost its object and is therefore rendered inadmissible.

Differences between Bill No. 412/2022 and Bill No. 182/2024

A major difference between the bills is that Bill No. 182/2024 includes the Reduction of greenhouse gas emissions from deforestation and forest degradation, the conservation of forest stocks, sustainable management, and the enhancement of forest carbon stocks (REDD+) within the Brazilian System of Emissions Trading (SBCE). According to the initial draft of the Bill No 182/2024, these initiatives would occur through "state programs under the 'REDD+ non-market approach'" and "jurisdictional carbon credit programs under the 'REDD+ market approach'," where the first type involves the possibility of receiving payments for results through non-market mechanisms, while the second type operates via market-based approaches, including the voluntary market.

In the chapter detailing the Brazilian Emissions Trading System (SBCE), Section III specifies the assets that comprise the SBCE and establishes that the recognition of Verified Emission Reduction or Removal Certificates (CRVE), based on carbon credits derived from actions, activities, projects, and jurisdictional REDD+ market programs, must observe, among other requirements, the methodologies accredited for REDD+ by the SBCE. It is the responsibility of the National Commission for the Reduction of Greenhouse Gas Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Management, and Enhancement of Forest Carbon Stocks (CONAREDD+) to participate in the accreditation of methodologies for generating CRVEs, maintain the registry of state non-market programs and jurisdictional programs, among other duties.

An additional point included in the chapter addressing the voluntary supply of carbon credits is the possibility of using the restoration, maintenance, and conservation of permanent preservation areas, legal reserves, or restricted-use areas, as well as conservation units, as generators of carbon credits. In other words, it allows the use of legally mandated obligations for rural properties to generate profits through carbon credits.

The governance of the SBCE was a subject of dispute between the legislative chambers. The Federal Senate designated the Interministerial Committee on Climate Change (CIM) as the supreme and deliberative body in Bill No. 412/2022. In contrast, the Chamber of Deputies proposed the creation of a dedicated body for the SBCE to alleviate the CIM's workload. The Senate returned Bill No. 182, but its original text still refers to the CIM as the superior body, aiming to avoid issues of initiative reservation, since the creation of bodies or changes to their responsibilities fall under the Executive Branch's authority.

The allocation of SBCE resources has also been changed: (I) at least 15% of the resources must go toward the operation and maintenance of the SBCE; (II) at least 75% of the resources must be deposited into the National Fund on Climate Change, to be used for financing decarbonization investments; and (III) at least 5% of the resources must be allocated to compensate the contribution of Indigenous peoples and traditional communities to the conservation of native vegetation.

Non-compliance with the rules applicable to the SBCE results in six types of penalties: (I) warning; (II) fine; (III) publication, at the offender's expense, of an extract of the condemnatory decision for two consecutive days, over a period of one to three consecutive weeks, in a communication medium specified in the decision, in cases of repeated serious violations; (IV) embargo of activity, source, or installation; (V) partial or total suspension of activity, installation, or source; and (VI) restriction of rights, which may include suspension or cancellation of registration, license, or authorization; loss or restriction of tax incentives and benefits; loss or suspension of participation in financing lines; and prohibition from entering into contracts with the public administration for up to three years.

The fine established by the bill (PL) specifies that it shall not be less than the cost of the unmet obligations, nor exceed 3% of the gross revenue of the legal entity. In cases of repeat offenses, the fine may progressively exceed this limit, up to a maximum of 4%. For individuals, fines range from R$ 50,000 to R$ 20,000,000. Sanctions that restrict rights will only be applied after all administrative appeal instances have been exhausted, and only in cases of infractions considered extremely serious.

Regarding the Verified Emission Reduction Certificates (CRVE) and carbon credits in areas traditionally occupied by Indigenous peoples and traditional communities, the bill establishes that the free, prior, and informed consultation—provided for in Convention No. 169 of the International Labour Organization (ILO)—must be funded by the interested developer and conducted according to the community's consultation protocol or plan, when available. Additionally, it mandates a minimum percentage of 50% of the carbon credits arising from greenhouse gases (GHG) removal projects and 70% of the carbon credits or CRVEs derived from "REDD+ market approach" projects to which these peoples are entitled.

Upon the bill's return to the Chamber of Deputies, after approval by the Federal Senate, the Chamber rejected Article 56, which addressed the investment of funds from technical reserves and provisions of environmental assets. The Chamber established an obligation for insurance companies to invest and reinstated what was then Article 60 of the text sent to the Federal Senate. This provision mandates that insurance companies, open private pension entities, capitalization companies, and local reinsurers must acquire carbon credits or shares of investment funds in environmental assets.

Final remarks

The exemption for the agricultural sector regarding regulation under the carbon market, present in Bill No. 412/2022, was maintained in Bill No. 182/2024. Therefore, this sector is not required to comply with the carbon market rules; however, sustainable practices may be eligible for generating carbon credits, which constitutes a problematic issue extensively analysed in Inesc's Technical Report (2023). Since agriculture is the largest polluting sector in Brazil, its exclusion from the obligation to comply with carbon market rules limits the effectiveness of the market itself and allows the sector to continue its activities unchanged, while also guaranteeing financial gains through carbon credit generation for those who merely comply with existing preservation and conservation laws.

Although the edition of the bill by the rapporteur Leila Barros, in the Legislative Report published on November 4, simplified the texts addressing REDD+, its inclusion in the SBCE remains unclear and opens the voluntary market to numerous REDD+ projects. This conflation affects both future REDD+ projects and the carbon market itself by treating them as the same instrument.

In cases of non-compliance with the rules of the SBCE, the applicable fine does not take into account the scale of the violation — that is, whether there was an excess emission of one metric ton of carbon dioxide equivalent (CO2e) above the entity's established quota or an excess of more than 100 metric tons of CO2e. The legal text broadly specifies only the amount to be paid in case of non-compliance, but it does not address the real cost of the violation, since the carbon equivalent ton is not priced. This renders the system flawed, as entities may be incentivized not to fulfil their obligations depending on their activities and emissions levels.

The percentages allocated to Indigenous peoples and traditional communities, related to GHG removal projects and "market-based REDD+" initiatives, guarantee the developer a profit over the rights of these communities. This occurs because the projects are implemented on their territories, yet 50% of carbon credits from GHG removals and 30% of the carbon credits or CRVE from market-based REDD+ projects are transferred to the developer.

The decision by the Chamber of Deputies to disregard Bill No. 412/2022 and revert to Bill No. 2,148/2015 — despite incorporating sections of the former — overlooks the participatory process that shaped the previous proposal, which included contributions from various sectors of civil society and the Executive branch. The text sent for presidential sanction did not undergo this dialogue and, as such, reaches the final stage weakened in terms of social legitimacy, primarily reflecting political and market interests.

What becomes evident from the final wording and legislative process of the bill is that the back-and-forth of articles between the legislative houses — along with the manoeuvre executed by the Chamber of Deputies to ensure it had the final say — served interests other than those of society. As a result, the bill yielded a notably opaque text, excluding key sectors from the regulation under the Brazilian Emissions Trading System (SBCE), such as the agricultural sector and environmentally appropriate waste and effluent treatment and final disposal units. It is worth noting that agriculture is one of the largest GHG emitters in the country, while the latter was considered only in terms of its mitigation potential, with no assessment of its actual emissions.

Bill No. 182/2024 now moves forward for presidential sanction. Given the strategic importance of the matter to Brazil's climate agenda, it is expected that the President will approve the bill in full, without vetoes. In this context, it is incumbent upon civil society to engage actively within the institutional spaces available — such as the Interministerial Committee on Climate Change (CIM) — and to coordinate with the stakeholders who will form the technical working groups responsible for developing recommendations and supporting the enhancement of the Brazilian Emissions Trading System (SBCE). Such engagement is essential to influence the broader construction of climate policies — including the carbon market — and to help ensure that the regulation of the SBCE effectively responds to societal concerns and expectations that were not adequately addressed in the legislative process.

www.inesc.org.br