



## TECHNICAL NOTE

### **Proposal for Regulation of Law 14119/2021, which establishes the National Policy on Payment for Environmental Services, National Registration of Payment for Environmental Services, and Payment for Environmental Services Federal Program.**

#### **INTRODUCTION**

This document's main purpose is to offer technical support and assist the regulation process of Law 14119/2021, which establishes the National Policy on Payment for Environmental Services, National Registration of Payment for Environmental Services, and Payment for Environmental Services Federal Program, as means to ensure the fulfillment of its commitment to promote conservation of ecosystems, water resources, soil, biodiversity, genetic heritage, and related traditional knowledge across the entire country. It is, therefore, the result of a coordinated effort between different sectors of the economy, governments and civil society organizations, aimed at promoting sustainable development in rural and urban areas, especially for traditional communities, indigenous peoples, family farmers, and in Private Natural Heritage Reserves (RPPNs in Portuguese acronym).

Over the last few months, the *Brazilian Coalition on Climate, Forests and Agriculture's* Task Forces (TFs) on Payments for Environmental Services (PES) and Carbon Markets were engaged in drafting a suggestion for the regulation of Law 14119/2021 in hopes of making the law's provisions effective and creating a propitious environment for PES initiatives in the country, whether public or private, while keeping in mind the experience gained from subnational PES projects and programs already implemented in several biomes in Brazil. The draft decree elaborated by the TFs can be accessed below.

Hence, this initiative is based on a solid knowledge background, gained over a long learning process, and understanding of challenges faced in PES projects and possible solutions to maximize outcomes, without neglecting the need to assess, appraise, record, and substantiate the environmental and ecosystem services provided.

Environmental and ecosystem services have gained attention from the private sector, as the sustainability concept (*lato sensu*) and corporate and product sustainability gains more and more ground. In this regard, sustainable engagement measuring indexes have already been created, such as the Dow Jones Sustainability Index family (New York) and the FTSE4Good Index Series (London). In Brazil, one can refer to the B3's Corporate Sustainability Index (ISE-B3), launched in 2018.

Given this scenario, the Coalition's proposal seeks to give even greater legal security to the provisions of Law 14119/2021, in as much as the strongest federal entity (the Federal Government) regulates the payment for environmental and ecosystem services and establishes the basis for a PES Federal Program, strengthening an unprecedented opportunity to engage the private sector in the country's PES agenda.

Within the framework of the UNFCCC's 26th Conference of the Parties (COP 26), PES initiatives are essential to reverse Brazil's greenhouse gas emissions profile, especially if we associate the idea of emissions reduction (carbon credits) with the concept of carbon capture and sequestration (part of the marketable values of ecosystem services provided by PES), and to shift upwards the prosperity and development curve in communities, indigenous lands and settlements.

Brazil holds the largest tropical forest in the world, which captures and fixes billions of tons of carbon. Moreover, a large part of its territory is occupied by agricultural and forestry activities that remove from the atmosphere and fix millions of tons of carbon in the soil and biomass. This ecosystem service has never been assessed and appreciated in detail. The PES changes this reality and the registration foreseen in law (which implementation is urgent) allows the consolidation of relevant data.

In addition, PES is an undeniable incentive towards conservation, with economic effects locked in a virtuous cycle:

- encourages farmers to preserve, once the preserved area can become an environmental asset (revenue generator);
- encourages producers to make PES [purchase PES Bonds - Green CPR (Certificate of Rural Product)] by making their products environmentally friendly and registering their ESG initiatives; and
- encourages public entities to invest in PES, fulfilling its institutional function and the international commitments undertaken by the country.

Neither must we not forget that a part of every Brazilian Real paid to the ecosystem service provider will be invested in conservation or regeneration activities, driving the low-carbon economy and generating income.

All in all, the creation of a PES market in Brazil will set an example for the world. We will contribute towards the planet's sustainability and show that it is possible to preserve, conserve, and restore ecosystems, pursuing in economy the driving force for sustainability.

Therefore, Law 14119/2021 is timely, and its regulation is crucial if we expect to align economic development and conservation of the natural heritage in Brazil.

Our role is to assist decision-makers and ease the understanding of the several social players regarding the main aspects that must be considered in the regulation process of Law 14119/2021, so as to ensure a propitious environment for distinct PES designs, both public and private, attracting investments and contributing effectively to sustainable development in the country.

## **10 RECOMMENDATIONS FOR REGULATION OF LAW 14119/2021**

1. **National Registration of Payment for Environmental Services (CNPSA in Portuguese acronym)** due to its purpose as a repository of PES programs and projects in Brazil, including those promoted at federal, state, municipal and private levels, the recommendation is to relocate it to Chapter I, not restricting it solely to the PES Federal Program. This is one of the most urgent topics to be regulated. In this regard, the proposal lists the information that shall be requested for validation of project contracts and programs placed therein by means of the issuance of a Registration Certificate (CR-CNPSA), which will serve as a document and data record. The Certificate, therefore, will not provide evidence regarding the execution regularity, evaluation and compliance of contracts, nor the suitability or substantiation of projects. In addition, registration will also enable the transaction records of PES bonds. Lastly, it is worth mentioning that the suggested proposals foresee that the Registration can be created exclusively to meet the goals of the National Policy on PES or it can be integrated to an existing or under development platform at federal level.

2. **Tax Incentives:** Registration Certificate in the National Registration of Payment for Environmental Services (CR-CNPSA) is a mandatory requirement for receiving the tax credits foreseen in Article 17 of Law 14119/2021. This proposal advises to recognize the incentive's retroactive effect to the date of entry into force of the law.
3. **Socio-Environmental Safeguards:** Under the National Policy on PES, socio-environmental safeguards are provided in section II in light of *the Socio-environmental Safeguards of REDD+ in Brazil*. This recommendation is crucial to ensure that public or private PES contracts are guided in a way that safeguards the rights of indigenous peoples, family farmers and traditional communities, in addition to acknowledging, fostering, and valuing their socio-cultural systems and traditional knowledge, among other aspects. The suggestion of regulation also includes a preferential and distinguished treatment to PES initiatives where indigenous peoples, traditional communities, family farmers, rural family entrepreneurs, urban or rural populations in vulnerable situations (including water vulnerability) are the providers and/or beneficiaries of environmental or ecosystem services.
4. **Credit rights:** in addition to the payment modalities foreseen in Article 3 of Law 14119, the credit rights related to the fulfillment of obligations due PES may be given as pledge or fiduciary alienation to guarantee financing, insurance contracts, issue of bonds or other forms of fund raising. This suggestion is already in line with the possibility of issuing Green CPR bonds, already regulated by the Executive and representatives of PES credits. These assets, being recognized as collateral, can be easily pledged as a guarantee (and the Registration would provide record and disclosure of asset encumbrance).
5. **Monitoring and verification of results:** this aspect is essential to ensure investors' creditworthiness in projects and programs with National Registration within the scope of the National Policy on PES. However, requirements for diagnosis, documentation, substantiation, qualification and valuation of environmental and ecosystem services must not hinder initiatives from providers who do not have the resources to adopt standards that require high transaction costs, especially those involving indigenous peoples, traditional communities and family farmers. Hence, our recommendation is based on minimum criteria to ensure diagnosis, monitoring, valuation and substantiation of results, based on adoption of standards for Measurement, Quantification, Verification, Registration and Transparency (MQVRT) of environmental assets, environmental services and/or ecosystem services by stakeholders involved in PES initiatives, without jeopardizing the voluntary adoption of more demanding standards, depending on market and/or funder demands.
6. **PES Federal Program Governance:** In Article 15, the law foresees the creation of a collegiate body chaired by SISNAMA with clear representativeness and attributions, to ensure social engagement in the process of monitoring the initiatives implemented in the scope of the PES Federal Program and its compliance with the objectives and guidelines of National Policy on PES. Within the suggestion for regulation of the law, there is a detailed composition of this collegiate body, which could be called the National Commission for the Payment for Environmental Services Federal Program (CN-PFPSA in Portuguese acronym). Also, general governance and operating rules regarding its duties are suggested. Its organizational detail might be defined by its members in its own bylaws.

7. **Eligible initiatives under the PES Federal Program:** Article 6, Paragraph 1, of Law 14119/2021 allows to identify several initiatives eligible to payment for environmental services. Thus, a proposal for regulation could enumerate, in a non-exhaustive list, initiatives considered essential to promote this agenda in the country. This means recognizing activities that provide environmental services associated with forest conservation, soil improvement, waste treatment, best practices in the agricultural sector, climate regulation, improvement of water resources and water availability, among others.
8. **Contract of Payment for Environmental Services under the PES Federal Program:** The proposal for regulation hereby defines mandatory clauses for PES contracts established under the federal program in addition to those already foreseen in law. These clauses ensure minimum quality standards for projects and programs by requiring:
  - i. description of the area in which the environmental and/or ecosystem services are being provided;
  - ii. description of MQVRT criteria and standards adopted to substantiate results from initiatives;
  - iii. authorizations, permissions, concessions and licenses issued by Public Administration agencies referring to the property's preservation and/or construction areas, when necessary;
  - iv. setting contract duration and payment frequency;
  - v. how to submit reports, audit methods and practices (if applicable), and other ways of providing evidence of the services provided.
9. **PES Federal Program Funding:** In addition to funding alternatives foreseen in Article 6, Paragraph 7, of Federal Law 14119, the proposed regulation lists other funding opportunities that might be employed by the Federal Program, such as:
  - i. environmental intangible asset transactions in regulated and voluntary markets;
  - ii. financial resources from public, private or multilateral sources, either as donations and/or investments;
  - iii. financial resource applications, including domestic and foreign equity and similar funds, such as the National Climate Change Fund, the Green Climate Fund and the Floresta+ Program;
  - iv. resources originating from arrangements, management contracts, agreements and other similar instruments, signed with federal, state and municipal public administration bodies and entities, or the private sector, either national or international;
  - v. resources from bilateral or multilateral climate, biodiversity, and other relevant agreements;
  - vi. donations from national and international entities, public or private;
  - vii. resources resulting from environmental compensation payments foreseen in Article 36 of Federal Law 9985, dated July 18, 2000.
10. **Resources allocation priorities:** among the allocation priorities of resources, in the scope of the PES Federal Program, these are suggested:



- i. areas to avoid habitat fragmentation, to create biodiversity and conservation corridors, provision and regulation of water resources in rural or urban areas;
- ii. Private Natural Heritage Reserves (RPPN);
- iii. PES initiatives whose providers are traditional communities, indigenous peoples, *quilombola* communities, family farmers or rural family entrepreneurs, as referred to in Federal Law 11326, dated July 24, 2006;
- iv. initiatives that involve partnerships with cooperatives, civil organizations and other associative groups that allow to scale up the activities that shall be implemented.

Also access the [draft decree](#) elaborated by TFs PES and Carbon Markets.