

Regulation of the carbon market in Brazil

Federal Decree 11075/2022

On May 19, 2022, the Federal Government took a step towards the creation of the Brazilian carbon market, by issuing Federal Decree 11075/2022. The decree regulates the National Policy on Climate Change (Federal Law No. 12187/2009), which lists the sectors that should reduce greenhouse gas (GHG) emissions:

- Generation and distribution of electricity;
- Urban public transport and interstate transport of cargo and passengers;
- Manufacturing industry and consumer durables;
- Fine and basic chemicals;
- Pulp and paper;
- Mining;
- Civil construction; and
- Healthcare and livestock

Of the measures established by the decree, four deserve immediate attention.

The first is the definition of new concepts in the Brazilian legal system, such as carbon credits and methane credits. Both credits are treated as “a financial, environmental, transferable asset representing the reduction or removal of one ton of carbon dioxide equivalent, which has been recognized and issued as a credit in the voluntary or regulated market.”

Although these are general concepts, they are already beginning to resolve the dual legal nature of carbon credits. The most emblematic aspect of this definition is to consider the credit as a “transferable financial asset,” that is, as a new form of property that will serve as the basis for future economic transactions, such as purchase and sale or guarantee service.

It is noteworthy, however, that the advance in concepts is not accompanied by the same advance in the regulation of exchanges. There are many concepts and little dynamics. The mismatch may be the result of the decision to cut off part of the regulation provided for in draft statements analyzed by specialists until the day before the publication of the Decree, to avoid legal questioning or unwanted political effects. The “system” for coordinating carbon emissions and exchanges has left; the concepts have remained.

The second innovation is the introduction of Sectoral Climate Change Mitigation Plans. The Sectoral Plans must outline gradual goals for the reduction of greenhouse gas (GHG) emissions, which must be in line with the objective and climate neutrality agreed by Brazil in its Nationally Determined Contributions (NDC) in the scope of the Paris Agreement. In other words, the NDC set the “national target”; the Sectoral Plans break down these goals for relevant sectors and companies in the country.

The Sectoral Plan will be defined by the government and approved by the Interministerial Committee on Climate Change and Green Growth (defined by Decree No. 10845/2021). To guide the government's action, the sectors in charge of reducing emissions (listed from i to viii in the introduction) have 180 days, according to the decree, to present their proposals on how to achieve climate neutrality.

In its analysis, the government will consider a range of criteria, such as the reality of each sector, emission levels and characteristics of each region. How these criteria will be

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weighed, in practice, in the definition of each Sectoral Plan, is still unknown, perhaps the most sensitive of all carbon market regulation in the country—as this will result in the sharing of the “burden of decarbonization” among sectors and regions.

There is still little understanding—and virtually no debate—about the exact terms of this sharing of “burden.” Which portion of the Brazilian economy decarbonization obligation will be borne by which sectors specifically? In each sector, how will this target be shared between large and small businesses? Regional differences will be incorporated into the distributed targets in what way exactly? And how will differences in the size of enterprises be considered?

In the economic transition, each of these issues has significant weight and can define, in a market, who comes out ahead—and, therefore, is more capable to be competitive and survive over time—and who should bear the costs of the transition—and, for that reason, it will have to transform its production model quickly, at the risk of having to close its doors in the near future.

The third innovation of the decree is the National Greenhouse Gas Emissions Reduction System (Sinare). Sinare creates a “central registry” for digital recording of GHG emissions, removals, reductions and offsets. Sinare will also keep records of carbon footprints, products, processes and activities, as well as native vegetation carbon, soil carbon, blue carbon and carbon stock unit.

Its specific rules of operation — such as registration, certification standard, accreditation of certifiers, implementation and accessible public registry—are still to be

defined by the Ministry of Environment and the Ministry of Economy. The decree, also from this point of view, is excessively economical. New infra-legal instruments should be edited to clarify how, in practice, the registration of emissions and credits will work.

By defining concepts, establishing the need for sectoral plans and creating Sinare, the country takes a step towards organizing its carbon market. The practical foundations of this market, however, is yet to be organized. In the Brazilian legal system, the appropriate legal instruments to fulfill this task are the laws. PL 528/2021, approved by the House of Representatives and pending in the Federal Senate, may be the fastest and most appropriate way to do so.

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Authors

*Daniel Vargas
Leonardo Munhoz*

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