

SUMMARY TECHNICAL NOTE

AMENDMENTS TO A PROVISIONAL MEASURE THREATEN THE IMPLEMENTATION OF BRAZIL'S NEW FOREST CODE



The enactment of Law 12,651/2012, which instituted the new Forest Code, was the result of one of the greatest political debates in the history of the Brazilian Congress. During the process of creating the law, in addition to countless technical consultations, more than 200 public and private hearings were held throughout the country. After a long and difficult period of negotiation marked by disputes and conflict, common ground was finally reached between the government, productive sectors, civil society, and the National Congress.

Between 2013 and 2018, Law 12,651/2012 was under review by the Federal Supreme Court as it considered four Direct Actions of Unconstitutionality (ADIs). The Supreme Court held public hearings to ensure the best possible decision in the ADIs. Academics and representatives of both civil society and government agencies took part in these hearings. Finally, on February 28, 2018, the Supreme Court ruled on the lawsuits, deciding in favor of the constitutionality of most of the provisions in question, bringing legal certainty to the implementation of the new Forest Code.

Under the general rules established at the federal level by Law 12.651/2012, states began to create specific norms and procedures for the environmental regularization of rural properties. Roughly 19 out of 26 states currently have some regulation on the subject.

Nearly seven years since the enactment of Law 12,651/2012, now that debate has subsided about its implementation, amendments to a provisional measure are being considered by Congress. The provisional measure addresses the necessary extension of the deadline for entry into the Environmental Regularization Program (PRA), but also contains amendments that aim to deeply change the law, threatening the implementation of the new Forest Code. Due to the procedures for approving provisional measures, these changes are being proposed without sufficient reflection or debate, without any public participation, and with limited parliamentary involvement. Finally, it is important to emphasize that the amendments do not meet the standards of urgency and relevance typical of provisional measures.

PURPOSE OF PROVISIONAL MEASURE (MPV) 867/2018

Provisional Measure 867/2018 changes the second paragraph of article 59 of Law 12,651/2012 (new Forest Code), to provide for the extension of the deadline for entry into the Environmental Regularization Program (PRA).

The justification provided by the Minister of the Environment for such a change is that the implementation of the PRA varies from state to state, and many states have not yet regulated their respective PRAs. Since producers' adherence to the PRA is a mandatory condition for environmental regularization in areas designated as Areas of Permanent Preservation (APP) and Legal Reserve, with more flexible parameters, not extending the deadline would most negatively impact small producers, family farmers, and traditional peoples and communities who have received land grants through the agrarian reform program.

AMENDMENTS TO THE PROVISIONAL MEASURE

A CPI's Technical Memo,¹ available in Portuguese, provides an analysis of the amendments proposed in the MPV, some of which could have profound consequences for the new Forest Code. The amendments that pose the greatest threats pertain to the rules regarding the PRA, the application of the forest legislation in relation to the percentage of Legal Reserve, and mandatory forest offset. Some amendments even aim to reintroduce rules from Law 12,651/2012 that were already rejected in the Supreme Court's 2018 ruling.

Congressional approval of these amendments could result in new lawsuits against the proposed changes to the new Forest Code, revision of the existing states' laws, and the interruption of the PRAs already in progress in the states. This would usher in a new period of legal uncertainty.

Procedures for MPV 867/2018

Once the MPV is published in the government's daily official journal (Diário Oficial da União), the House and Senate should evaluate steps to ensure its final passage into ordinary law. Lawmakers have already submitted amendments to the MPV before a joint commission that will issue an opinion on the matter. Subsequently, the MPV moves to the plenary of the House of Deputies. If passed in its entirety or with amendments, it is resubmitted to the Federal Senate. The Senate can pass the text as received, or propose modifications. In the latter case, the MPV returns to the House of Deputies for a final decision.

¹ For analysis see: <https://www.inputbrasil.org/publicacoes/a-medida-provisoria-no-8672018-que-prorroga-o-prazo-de-adesao-ao-pra/>

TIMELINE

- ☒ December 27, 2018: The MPV was submitted to the National Congress
- ☒ February 12, 2019: 35 amendments were submitted to the MPV
- ☒ February 15, 2019: MPV was assigned to a Joint Commission - no opinion has been issued as of this date
- ☒ March 21, 2019: MPV has been given urgent status, and the House agenda has been blocked for its consideration
- ☒ April 4, 2019: Deadline at the National Congress (postponable)

RECOMMENDATION

Increasing agricultural production to meet the growing demand for food, while also preserving the environment is one of world's greatest challenges. In this context, Brazil's wealth of natural resources aligned with relevant and scalable public policies for the rural sector offer an immense opportunity for the country to achieve these two objectives together. The new Forest Code determines a regulatory framework for environmental protection within private property. If implemented effectively, the code has the potential to increase the efficiency of land use in Brazil, protecting natural resources and increasing agricultural production through productivity gains.

The amendments to MPV 867/2018, besides not being pertinent to the central objective of the MPV, can have serious implications for the Forest Code, jeopardizing efforts that have been made to date to implement this policy.

CPI therefore recommends that the National Congress approve the provisional measure in its original version, since the extension of the deadline for entry into the PRA is necessary, and reject the proposed amendments when put to vote.

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The opinions and conclusions expressed in the analysis are those of the authors and do not necessarily represent the views of partners and other stakeholders. The Land Use Initiative (INPUT - Iniciativa para o Uso da Terra) is a dedicated team of specialists who work at the forefront of how to increase environmental protection and food production. INPUT engages stakeholders in Brazil's public and private sectors and maps the challenges for a better management of its natural resources. Research conducted under INPUT is generously supported by the Children's Investment Fund Foundation (CIFF), Norway's International Climate and Forest Initiative (NICFI) and Instituto Clima e Sociedade (iCS) through grants to Climate Policy Initiative.