



The Future of Infrastructure in Brazil under Discussion

An Integrated Vision of Proposed Legislation is Needed to Ensure Progress

SUMMARY

Adequate infrastructure is fundamental to a country's economic success. Brazil has lagged behind much of the rest of the world in terms of both quality and quantity of infrastructure. This results in complicated logistics for companies and poor mobility for citizens. It increases costs of production and reduces growth and productivity. However, there are opportunities for improvement.

At least three bills are currently being discussed in the National Congress, which, once approved, would aim to establish a legal and regulatory climate capable of attracting strategic investment for the design and execution of new infrastructure ventures in the country.

In this document, researchers with the Climate Policy Initiative (CPI/NAPC PUC-Rio) analyze the opportunity for a comprehensive discussion that would ensure better infrastructure and environmental conservation in Brazil, using the proposed legislation as a starting point. This could benefit the productive sector and society as a whole.

One of the biggest gains that would come from a systemic vision between the three proposals, in light of the guidelines of the Investment Partnership Program (PPI - from the Portuguese term *Programa de Parceiras de Investimentos*), is the potential to more precisely visualize the challenges faced throughout the life cycle of an infrastructure project. In particular, the phase of the technical, economic and environmental feasibility study could be strengthened, advancing the discussion of questions that are currently only addressed during environmental licensing. This would foster the bidding of more robust, higher-quality projects, promote the security of investments, and ensure socio-environmental protection.

INFRASTRUCTURE: AN INTEGRATED VISION

There is no question that the infrastructure Brazil needs will depend upon better projects and a more secure investment climate. As seen in current legislation, detailed in administrative proceedings for sectors such as energy and transportation, infrastructure projects mature in various phases of research and public decisions. Technical, Economic and Environmental Feasibility Studies (EVTEA - from the Portuguese term *Estudos de viabilidade técnica, econômica e ambiental*) weigh costs and benefits, and indicate which alternative is most suited to the service to be offered. Business ventures with the potential to cause environmental damage are subjected to the environmental licensing procedure, which analyzes and eventually attests to the project's environmental viability, the conditions for its installation, and its operation. Ideally, the project's environmental feasibility approval would be followed by bidding or an auction, which would lead to finalizing prices, setting the rules of operation, and the selection of project managers. The Investment Partnership Program (PPI - from the Portuguese term *Programa de Parceiras de Investimentos*)¹ guidelines reinforce these phases of the project life cycle and include the need for public consultation and the approval of the General Accounting Office (TCU - from the Portuguese term *Tribunal de Contas da União*), promoting better transparency and legal certainty throughout the project life cycle.

Three bills currently making their way through the National Congress would alter the legislative framework and the current guidelines regulating the infrastructure sector. The bills would regulate different phases of project life cycles. Bill 3.729/2004² specifically regulates environmental licensing; Bill 3.453/2008³ deals with concessions and public-private partnerships; and Bill 1.292/1995⁴ covers the new bidding procedure. The first two are expected to be brought before the plenary session of the House in the second semester of 2019, while the third is awaiting delivery to the Senate. Meanwhile, they have all been discussed separately and incompletely.

Furthermore, Conversion Bill (*Projeto de Lei de Conversão* - PLV 24/2019)⁵ - which originated from Provisional Measure 886/2019 and addresses the organization of presidential and ministerial entities - represents another opportunity to address the issues of the environment and infrastructure in a transversal fashion. This Conversion Bill incorporates various mechanisms that alter the PPI,⁶ such as transferring the PPI Special Secretary to the auspices of the Presidential Chief of Staff. It also includes the requirement that the minutes of the notice and contract are to be discussed in public consultation before the bidding.⁷ These proposed bills and conversion bill require a comprehensive discussion on some of their central terms, so they do not result in contradictory rules, and to allow for the design and execution of new ventures that would attract strategic investment to the country.

Working with a project life cycle perspective and engaging in an integrated discussion of the legislative proposals would create the opportunity to bring forward questions that are currently only addressed during environmental licensing. Addressing these pertinent questions earlier in the process would lead to the implementation of better and more robust infrastructure projects and reduce the risk of conflict while increasing the security of investments. This means seizing upon the

1 <https://www.ppi.gov.br/10-diretrizes>

2 <https://www2.camara.leg.br/atividade-legislativa/comissoes/grupos-de-trabalho/56a-legislatura/licenciamento-ambiental/documentos/outros-documentos/texto-base-4a-versao-apresentado-em-08-08.2019>

3 <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-temporarias/especiais/56a-legislatura/pl-3453-08-parcerias-publico-privadas>

4 https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1765896&filename=Parecer-PL129295-17-06-2019

5 <https://legis.senado.leg.br/sdleg-getter/documento?dm=8011123&ts=1568898866382&disposition=inline>

6 Regulations originally proposed under Provisional Measure 882/2019, which expired on August 30, 2019, would nevertheless be subject to revision by the legislative decree that regulates their effects.

7 It depends on federal congressional approval before October 16, 2019, so as not to lose its effectiveness.

ideas and the importance of the EVTEA and strengthening them. Bringing these questions forward to the EVTEA, rather than waiting for environmental licensing, means that they can be considered at a point where the project is ready for thorough analysis but does not yet have the defined contours or financing constraints that would block or make changes expensive or require cancellation.

Strengthening feasibility studies to construct a robust pipeline of projects has three fundamental implications, already in practice in some sectors. It is essential that they be recognized by law and that their implementation be subject to quality control.

The first improvement to be made to the EVTEA is an effective recognition of the environmental component in the delimitation of the projects' areas of coverage and areas of direct and indirect influence, as well as the clear definition of these concepts within the studies' terms of reference. Currently, the area of influence is only being addressed in the legislation on environmental licensing, which proposes a fairly restrictive definition of impact in which only the venture's direct area of influence is considered. If this discussion could also be included in the other legislative proposals, it would broaden the discussion and result in a consistent definition that would be applicable to all phases of an infrastructure project.

A second improvement that should be included in the scope of the EVTEA, and which has only been discussed in the context of environmental licensing, is consultation with the community and traditional populations. Such consultation should be regarded as a process of dialogue. When initiated during the phase of feasibility studies, these consultations would offer the community a better understanding of a project, and would allow for a better evaluation of local governments' institutional capacity to absorb impacts. All of these elements are fundamental to a project's design, its evaluation, and the creation of its often associated mitigation actions, compensation, and governmental policies.

Finally, it is essential to codify into law the dialogue between the results of the EVTEA and the terms of reference of Environmental Impact Studies (EIA - from the Portuguese term *Estudos de Impacto Ambiental*), in the context of environmental licensing.

At the same time, care must be taken so that legislative projects do not create additional points of tension; as with the proposed bidding law, which would establish that a delay in issuing environmental licenses, or the non-compliance of licensing obligations, could be a reason to request termination of a contract with the public administration. This could lead the Public Administration itself to pressure environmental entities to expedite licenses without conducting necessary analysis, or to be less rigorous in the monitoring and inspection of license compliance. It could also encourage public prosecutors to intensify inspection of environmental entities and the parties of the contract.

The need to unburden the process of environmental licensing is a rare point of consensus between environmentalists and the productive sector and this presents an opportune moment to hold productive discussions. Strengthening the EVTEA fits well within PPI guidelines, and the discussion of the proposed legislation on bidding and private-public partnerships would also stand to gain from this transversal discussion. Targeting the EVTEA process would anticipate environmental requirements and align with the proposed legislation on environmental licensing, without creating new points of tension.

The current disjointed discussions around the proposed legislative projects undermine the possibility for progress and meaningful reform. Ultimately, only by applying an integrated view of challenges faced throughout the life cycle of an infrastructure project, will policymakers be able to create a more secure and coordinated legal and regulatory climate between all those involved in or affected by these ventures.

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