

ENVIRONMENT

VOLUNTARY CARBON
MARKET REGULATIONS

VdA EXPERTISE



10 October 2024

Decree-Law 4/2024, of 5 January 2024, (RJMVC) creates the voluntary carbon market (VCM) but its effective implementation and operation rest on the following additional measures:

- A regulatory framework to be created by ordinances;
- Development of a public platform to register carbon projects and carbon credits;
- Appointment and publication of the Technical Monitoring Committee members, set up under Order 3771/2024, of 8 April 2024;

- Development of carbon methodologies, public consultation and subsequent implementation.

Three of the four ordinances provided for in the RJMVC and identified below were published on 2 October 2024. An ordinance has yet to be published on the conditions and minimum insurance capitals to cover reversed sequestered emissions, such as in the event of a forest fire.

Ordinance
239/2024

Fees

Sets the fees to be collected in connection with the voluntary carbon market by the entities that oversee and manage the registry platform

Ordinance
240/2024

Independent Verifiers

Defines the qualification criteria for independent verifiers of greenhouse gas emissions mitigation projects and identifies the entity that manages the qualification system for the Voluntary Carbon Market

Ordinance
241/2024

Registry Platform

Lays down the general requirements for the voluntary carbon market's electronic registry platform

The ordinances on the regulation of the MVC are an important step towards the implementation of the MVC in Portugal. The wording of the ordinances might raise doubts, which could require the publication of guidelines or clarifications on their proper application.

The registry platform at the heart of the voluntary carbon market

The success of the voluntary carbon market (VCM), which must be both reputable and reliable, hinges on its transparency.

The RJMVC requires the creation of a public platform to trace carbon credits.

Ordinance 241/2024 regulates the platform's operating requirements and identifies its required functionalities.

The Ordinance and Article 18 of the RJMVC require:

- Market agents to open an account on the platform;
- Carbon projects and credits to be registered on the platform;
- Credits to be issued and cancelled (including the Guarantee Fund) on the platform;
- Relevant promoters to submit their project monitoring reports on the platform;
- Independent verifiers to submit their initial and periodical verification reports on the platform;
- Carbon methodology proposals could in the future be submitted (and managed) on the platform.

But there are a few aspects that raise interpretation or implementation doubts and deserve clarification, including:

1) Carbon credit trading

The Ordinance breaks new ground with a definition of credit 'trading' different to the RJMVC.

Under the RJMVC, 'credit trading between market operators must be registered on the platform and takes place whenever there is a change in title'.

The Ordinance in turn defines 'credit trading' as 'a process on the platform involving the transfer of carbon credits between accounts,' presumably open on the platform.

Hence the question could arise as to whether carbon credits can, or must, be traded through the MVC platform.

Although the wording of the text of the ordinance is not entirely clear, it seems to result, from the reference to the possibility of links to external marketplaces to support these transactions, that the platform will have a function of mere registration of the transactions carried out.

2) Public information

The distinction between the information that market operators are required to submit on the platform and that which will then be publicly available needs to be clarified as well.

The RJMVC requires certain information and documentation to be released to the public to ensure that MVC activities are transparent.

But the Ordinance adds, without going into much (if any) detail, that 'additional information deemed relevant' can also be provided to the public, who can access such information for free and without being registered on the platform.

The scope of this information must be precise to not undermine the trust of market operators.

The Ordinance further vests in ADENE – *Agência para a Energia* (Agency for Energy) ('ADENE') the power to define which documentation or information should or should not be kept confidential at the request of market operators. It would be helpful to clarify the role of the oversight body, *Agência Portuguesa do Ambiente* (Portuguese Environment Agency), and the criteria for submitting and approving confidentiality requests.

Understanding the practical application of all regulations on the Voluntary Carbon Market requires a careful and combined reading of the ordinances and of the ordinances and Decree-Law 4/2024.

Independent Verifier

The role of independent verifiers is key to validating projects and their results in generating carbon credits as part of a robust monitoring, reporting, and verification system.

The RJMVC requires independent verifiers to be 'duly qualified', according to criteria set out in Ordinance 240/2024.

Qualification of independent verifiers requires:

- Higher education in their area of expertise;
- Relevant professional experience;
- Professional training in auditing;
- Passing an examination conducted by the qualification management body;
- Being a full member of the relevant public professional association, where applicable.

ADENE is the 'qualification management entity' whose remit under the Ordinance is to conduct the qualification procedure, which includes a compulsory examination and the issue of the relevant certificate of completion.

This option must be closely scrutinised under the principle of proportionality inherent in the system of access to and exercise of professions and professional activities because it limits the freedom to choose a profession or job and will not be exercised by a public body.

The lack of explicit provisions for the exercise of the activity in the MVC by qualified professionals of other EU Member States also requires a careful analysis of the applicable legislation.

Fees for market operators, carbon projects and credit trading

The fees stipulated in the RJMVC are set in Ordinance 239/2024:

- Opening an account on the registry platform (between €50 and €500, depending on whether the account holder is a natural or legal person);
- Maintaining an account on the registry platform (between €10 and €120, depending on whether the account holder is a natural or legal person);
- Registration of individual projects or programmes on the registry platform (€950 + extra for programmes);

Projects developed in priority areas (such as Natural Parks) are fee-exempt.

- Carbon credit trading (€0.20/credit);
- Approval of methodologies tabled by market operators (€3,000 per new submission and €1,500 per review).

Approval of methodologies tabled by market operators by 31 December 2026 is subject to a €500 fee. In other words, the ordinance's wording appears to imply that the standard €3,000 fee will only apply from 1 January 2027.

This option could be relevant to encourage the start-up of the voluntary carbon market across a range of industries.

Effective date

The ordinances come into force on 3 October 2024.

The ordinance regulating the qualification of independent verifiers will only become effective 90 days after publication.

Next Steps

We are soon expecting the missing ordinance to be published, the members of the Technical Monitoring Commission to be appointed, and the methodology relating to forest sequestration projects to be public discussed.

Contacts



ASSUNÇÃO CRISTAS
ACR@VDA.PT



CATARINA PINTO CORREIA
CPC@VDA.PT



JOÃO ALMEIDA FILIPE
JDAF@VDA.PT



CAROLINA VAZA
CVS@VDA.PT