Fiscalização a serviço da sociedade

REVISTA do TCU

Federal Court of Accounts Journal • Brazil • year 46 • Issue nº 129 • January/April 2014 • English version

Interview with João Augusto Ribeiro Nardes, President of Federal Court of Accounts

Federative Republic of Brazil

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Vision Statement
To be an institution of excellence in control and to contribute to the improvement of public administration.

Mission Statement
To oversee the public administration and contribute to its improvement, for the benefit of society.

Federal Court of Accounts – Brazil Journal, v.1, n.1 (1970) - . – Brasília : TCU, 1970- .
v.
From 1970 to 1972, annual; from 1973 to 1975, triannual; from 1976 to 1988, biannual; from 1990 to 2005, quarterly; 2006, annual; as of 2007, triannual

ISSN 0103-1090

1. Oversight of public expenditure- Brazil Journal, v.1, n.1 (1970) - . – Brasília : TCU, 1970-

Catalogued by Biblioteca Ministro Ruben Rosa

Department of Communication
SAFS Quadra 4 Lote 1
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Printed by Sesap/Segedam

Letter to the Reader

Dear reader,

This is TCU Journal nº129, covering the first four months of 2014. In this issue, we hope you find he articles that reflect on "government oversight" and put the role of the Court into context by publishing texts of high technical level that address relevant matters, according to moment the institution and the country are going through.

Our interviewee in this issue is the president of the Federal Court of Accounts, minister Augusto Nardes. He spoke about important facts of his first year as president: c specialization of TCU audit departments; coordinated audits performed together with the State Courts of Accounts; the event Public Dialogue events carried out; the performance of Serzedello Corrêa Institute and his first year as President of OLACEFS.

Some topics of the interview are taken up in the Highlights section, such as the OLACEFS General Assembly, the Public Dialogue event and the launch of the publication "Public Governance". We also address people management in public administration, coordinated audit on Amazon protected areas, distance capacity building courses for public servants and assessment of regulatory agencies.

In the Articles section, some texts outline the area of performance of the Court, such as "TCU and its non-mandates", which discusses the oversight competency of the Court, and "The financial audit function in Courts of Accounts: TCU's perspectives and the experience of the French Court of Accounts", which deals with the adoption of international financial audit standards. There are technical texts about the application of review appeals or recisory actions, Financial Law and contracts. Articles addressing topics such as social control and performance audits show the importance of the Court in the social and political context in Brazil.

We wish you a pleasant reading. Please be assured that you have in your hands our best editorial efforts.

Bruno Spada

Aroldo Cedraz de Oliveira
is Minister of the Federal Court of Accounts and Editorial Council Supervisor.

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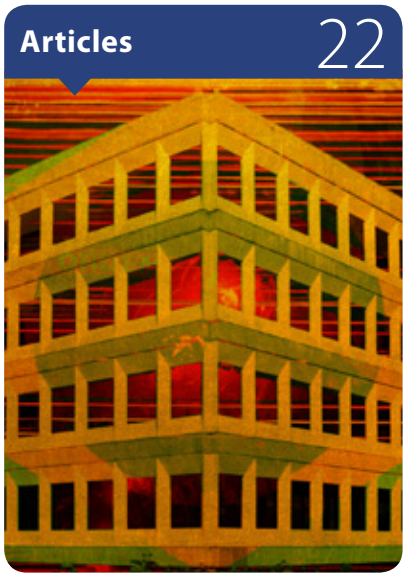


Articles

Positive balance

Minister João Augusto Ribeiro Nardes
President of Brazilian Federal Court of Accounts

Augusto Nardes has been a minister at the Federal Court of Accounts since 2005, following a political career which began in 1972 at the age of 20, at which time he was elected the youngest councilman of the history of Santo Angelo. Since January 2013, he has also taken on the tasks of president of TCU (Brazilian Federal Court of Accounts), as well as of the Organization of Latin American and Caribbean Supreme Audit Institutions (Olacefs). He has a degree in Business Administration, a Graduate in Development Politics and a Master's Degree in Statistics Development from the Institut Université d'Études, Geneva, Switzerland.

In the beginning of your presidential term at TCU, you proposed to specialize the TCU units as a way of advancing towards government oversight excellence. In this second year of your administration, what is your overall judgment of such action? What is the expectation for 2014?

The result is extremely positive. When I was preparing myself to take office as TCU president, I was pleased to realize that my personal impressions and the direction I intended to follow during my administration were widely accepted by the other ministers in the Court, our main leaderships and our technical staff. In addition, they were fully compliant with the Strategic Plan 2011-2015.

One of those directions concerned, exactly, the promotion of a broad development in the structure of the regional audit departments, which became specialized in a specific government function.

The specialization followed the success model of the Secobs, departments specialized in public works, and of the Sefids, departments specialized in privatization processes and concessions of public services. Thus, all our departments now focus their activity on topics of major interest to our development, such as health, education, and environment, among others. By being highly specialized, the units are in a better position to evaluate the governance environment in which they are inserted, and, consequently, this contributes to the presentation of proposals that can lead to governance improvement.

Even though the changes made were aimed at medium and long term results, we can find significant progress during the first year. The technical units, formerly designated

by numbers, now have their own identity and a well-defined range of activities, which enables better quality works, improved coordination with public managers, as well as a vision of the future. Such identity leads to greater involvement of the staff with the specific functions of each department, which makes planning of oversight actions and auditor training easier.

The excellent results that the Court presented, concerning systemic works and coordinated audits in Education, Health, Culture and Environment, are an indication of improvements made possible by specialization.

In addition, one may say that the creation of the Department of Public Procurement Audit (Selog) has consolidated a new field of expertise and, at the same time, has enabled the specialization of the other Segecex (General Secretariat of Government Audit) units in Brasilia. By implementing that unit, TCU has been able to further contribute to manager training and to the discussions concerning the improvement of the legislation on contracts in public administration. Within this context, I highlight the event held at TCU's head office, in July last year, in which twenty years of Law n° 8.666/1993 were discussed.

Therefore, in 2013 our efforts were focused on the specialization of the departments located in our head office, in Brasilia. Based on the enthusiasm of the auditors and of the managers responsible for the extraordinary work we have been delivering, there is no doubt that the initiative has been a great success.

In 2014, our priority has been to make progress with regard to the state level units. Following the launching of the Secex (Regional Audit Department) Strengthening Plan in the states, a number of focus issues were attributed to each Secex. Hence, as regards the systemic nature works, some units deal with Education, others with Health and so on, so that all the specialization themes of the technical units from Brasilia find correspondence in the regional Secex, in accordance with the country's sub-regions. The successful Selog experience is also being implemented in the states, with the creation of Centers for Logistics Procurement Oversight in eight Secex. Public bidding and contract processes will proceed to those centres for instructions.

We are now in the process of strengthening our technical units located in the states, by specializing and regionalizing their activity. Just as the head office units, they all report to four general-coordinations, so as to make the direction and monitoring of their activity easier.

Therefore, it is rewarding to realize that my impressions on the work of our departments were right. It was still during the transition to my administration that I felt the need to specialize our units and to better distribute the Segecex functions into regional coordination. The advances achieved so far already enable better coordination between the technical units, more synergy in planning, as well as a more systemic vision of the public policies. In addition, most importantly, they lead to better quality of the work and to a consequent increase in TCU's ability to achieve its goal of contributing to Public Administration improvement to the benefit of society.

TCU has been investing in the conduction of coordinated audits, in partnership with audit courts across the country, and evaluating issues such as the governance of conservation units of the Amazon and the Brazilian secondary school education. What is the aim of those actions? What benefits are expected from such joint action?

With a focus on the Country's federal model and the need to evenly advance together with the three spheres of the government, TCU has directed its efforts to conduct coordinated audits with the courts of audit in the states, so that the diagnosis produced by such oversights are as comprehensive as possible.

We expect this joint action to result in strengthening the whole system of the courts of audit in the country, for at the same time that it promotes the exchange of experiences, it also promotes the participants' training.

To make its strategy viable, TCU signed, on March 21, 2013, terms of cooperation with state and local courts of audit from 25 states of the federation to carry out coordinated audits in the areas of education and environment. The audits, which have already been conducted, revealed a comprehensive diagnosis on the environment and education, and had major repercussion in the media and society.

New audits will be conducted in 2014. In the last week of March, during the "International Cooperation and the Brazilian Courts of Audit" seminar, a signing ceremony for a new agreement of technical cooperation between the Brazilian audit courts, the Association of Members of Audit Courts of Brazil (Atricon) and the Rui Barbosa Institute (IRB) was held. The purpose of the agreement is to conduct a coordinated audit of the government actions concerning the health sector. It makes provision for audits to assess the quality of basic public healthcare services.

The purpose is to identify the main issues that affect the quality of the basic healthcare service network provided by healthcare centres.

By the way, the coordinated audit work, the specialization of our technical units, a closer approach with the international bodies and the focus on the improvement of governance set up the main guidelines of our management.

On the path to approaching public managers, Public Dialogues gained prominence. What should we expect from those events? Did the held events have the expected results? What will be necessary to improve this contact with the managers, the local courts of audit and the citizens?

The social control exercised by the citizens and the organized society makes up the external monitoring bodies that give support to the governance of public institutions. Such external monitoring bodies are responsible for the independent evaluation and monitoring of those institutions, according to the Basic Framework of Governance, made available by TCU.

However, if society and citizens are to play this role in an effective way, they need to be mobilized and receive guidelines on how to monitor public expenditure. In addition, our strategies need to be disseminated, so that we can have an unbiased evaluation of the directions we have taken regarding government oversight.

With this in mind, we have vigorously resumed the "Public Dialogue" project, initiated during Minister Valmir Campelo's administration, in 2003. It consists of a set of systematized actions involving relationship, promotion and sharing of knowledge with the society, the National Congress and public managers, with the purpose of approaching the court to society, especially to teachers, students, members of audit committees and NGO representatives. The aim of such approach is to elucidate the oversight function of the State and to encourage social control and citizenship. In recent years, TCU has made use of the Dialogues to improve its pedagogical function, by advising public managers and society about oversight procedures and best practice management, in order to prevent possible irregularities at the very source.

For 2013 and 2014, the chosen theme for this project was "improvement of public governance". Therefore, during the meetings, governance concepts are presented and, subsequently, managers discuss challenges and ways to reduce risks from controls that must be adopted in areas such as bidding, contracts and agreements, as well as other locally relevant areas, all aiming at improving management.

Hence, TCU contributes to the training of managers, and at the same time, it evaluates whether its own strategic guidelines, especially the priority given to improving public governance, meet society's expectations.

In 2013, a total of 14 events were held, seven of which in Brasilia and the other seven in different federative units (Rio Grande do Sul, Pará, Bahia, Pernambuco, Rio de Janeiro, Amazonas e São Paulo). Nearly five thousand public officials attended the meetings, including mayors, state secretaries, councilmen, members of audit courts, managers, as well as liberal professionals and university students.

This year, new events have already been held, and one of them took place in Minas Gerais, in partnership with the state's Audit Court. That edition brought together around 4.7 thousand participants, representing 94% of the 853 municipalities of Minas Gerais. Over 11 thousand people have already taken part in the Public Dialogues, in all the events.

By giving emphasis to the Public Dialogue, the court aims at fulfilling its institutional mission of overseeing Public Administration. This will lead to its improvement to the benefit of society. Such initiative seems especially appropriate at this moment of national life, when the Brazilian population demands the provision of good quality public services and the fight against waste of public money.

I am convinced that events of this nature can contribute for public institutions to become more efficient, productive and effective, through the improvement of oversight actions that induce best governance practices of the State.

Since the beginning of your administration at the Court of Accounts, you have raised the banner for public management improvement by means of governance tools. Now, TCU has launched the Basic Framework of Governance, which is beginning to be used in the audits by the court. Can this framework be employed by those who are not under jurisdiction? Can the investments in governance contribute to a more accelerated national development?

"Public Sector Governance" is defined in the Basic Framework as a set of leadership, strategy and oversight mechanisms put into practice by several governing authorities to promote the ability

to evaluate, direct and monitor the performance of managers under its jurisdiction, with a view to conducting public policies and providing services in the interest of society.

From the definition above, we have organized and put together a set of good public governance practices which, if observed, can increase the quality and effectiveness of government policies and services provided to citizens, and therefore, speed up our development, understood as a combination of economic growth and improvement of our social indicators.

The court has identified a number of bottlenecks that prevent the country from occupying a prominent position worldwide concerning development, despite the fact that we are the sixth or seventh economic power. These bottlenecks originate from common causes such as evaluation, direction and monitoring problems of public policies. Thus, the improvement of governance is perceived as a major assumption to overcome the challenges presented to our full development.

In addition to clarifying and encouraging public officials to adopt good governance practices, this Framework has become a guideline for the actions of TCU itself towards improving internal governance. Its concepts can be used by any public officer at federal, state and local levels.

We have been sending the Governance Framework to all states and municipalities as well as to the leading managers of the federal government. The first impressions have been very positive. One of the evaluations, which turned into a great honor to us, was addressed by the outstanding entrepreneur, Dr Jorge Gerdau Johannpeter, currently the Coordinator of the Management and Planning Chamber of the Federal Government. The complimentary comments concerning the Basic Framework of Governance published by TCU in the beginning of the year have been transcribed below:

"I was delighted by the content, substantial and deep, and although it is directed to the public sector, the main concepts mentioned also apply to the private sector. I was also fascinated by the fact that I have been reinforcing the point that the concept of public sector Governance is barely present in our Country, considering that it is one of the most important stages in the management process. Congratulations for the quality of your work and for the invaluable source of references. I am very happy and I believe that a framework of such level should be disseminated in Brazil, as the country is lacking information on the subject."

TCU has increasingly invested in prior audits, which identify errors before loss to the public treasury occurs. In other words, "prevention is better than cure". On this route, what is your view on Instituto Serzedello Corrêa's activity, as regards the qualification courses they offer to civil servants and citizens from all over Brazil?

TCU is recognized by its monitoring and punitive activity. However, it plays another extremely important role, of a preventive and pedagogical nature, in so far as it seeks to guide and train servants and public managers, through the purpose of providing them with information and the necessary tools to efficient, productive and effective public policies.

In this context, Instituto Serzedello Corrêa (ISC)'s activity deserves attention. The institute's pedagogical function is demonstrated by means of promoting educational actions, both face-to-face instruction and distance learning, which aim at enhancing government oversight and internal control, with a view to the improvement of management and performance of public administration and strengthening of social control.

It contributes to enhancing public administration oversight by training TCU's staff, as well as those employed by the State and Local Audit Courts and by the internal control entities of the three branches of power in the three spheres of government. In 2013, 20,022 servants from those entities took part in training actions provided by ISC in the areas of government audit, work audit, IT audit, and operational audit, among others.

By providing courses in the areas of bidding and contracts, governance, accountability, budget and planning, for federal, state and local government public servants, ISC seeks to enhance the management and the performance of the public entities those servants are linked to. In 2013, 838 servants were trained in such areas, as well as in others.

Additionally, ISC also trains local government and state councilors who are responsible for monitoring the implementation of public policies in such areas as education and health. By providing those councilors with the necessary information to understand their role and how to monitor government action, ISC contributes to strengthening social control exercised by the citizens. The Institute has already recorded

the participation of 4,817 people, among councilors, public managers and citizens, in those courses, since December 2013.

In addition to those areas of activity, it is imperative to point out ISC's international activity. The presidency of the Organization of Latin American and Caribbean Supreme Audit Entities (Olacefs) and the leadership of the Executive Secretariat of the Organization of SAIs of Portuguese Speaking Countries (OISC/CPLP), both under the responsibility of the President of TCU, have given prominence to the institution in the international community, and ISC has played an important role in this process. Courses in Spanish for Latin American countries and courses for other Portuguese speaking countries in Africa and Asia were offered to over 250 people in 2013. Consequently, this led TCU to increase its international cooperation and to share good practices with other countries.

During your presidential term in the Organization of Latin American and Caribbean Supreme Audit Institutions (Olacefs), after the first year of administration, is it possible to take stock of the Brazilian presidency as head of this Organization? Within this context, what were TCU and the Olacefs performances like in the scope of the International Organization of Supreme Audit Institutions (Intosai), held in China?

During the first year of our administration as head of Olacefs, we boosted the international dimension of the Organization and its capacity to foster the institutional development of its members.

In line with the motto of the International Organization of Supreme Audit Institutions (Intosai) – "Mutual experience benefits all" - , Olacefs promoted the development of closer relations with Intosai's other regional groups. In July 2013, a letter of intent was signed between Olacefs and the Organization of Supreme Audit Institutions of the Caribbean (Carosai) and, in September, a memorandum of understanding was signed between Olacefs and Afrosai, a branch institution of the African continent.

Similarly, we have strengthened and expanded partnerships between Olacefs and the multilateral and cooperation bodies. We have ensured the second phase for the German Agency for International Cooperation Programme (GIZ) with Olacefs, on the basis of a participatory planning. The meetings with the World Bank, the Inter-American Development Bank (BID) and the Intosai Development Initiative (IDI) have already borne fruit with technical and financial cooperation for Olacefs several initiatives.

Throughout 2013, we worked to promote the inclusion of supreme audit institutions that had expressed interest in joining the Organization. Three new members were approved at the first Olacefs meeting in 2014 – the Supreme Audit Institution (SAI) from Curacao and the audit courts of the state of Amazonas and the municipality of Rio de Janeiro. On the same occasion, the guidelines to enable the accession process for new members were approved. Therefore, for the next two years, our administration will continue broadening the cooperation in the scope of Olacefs with not only multilateral bodies and other regional groups but also with new members, among national and sub national oversight entities.

The strengthened cooperation allowed for the promotion of coordinated audits within Olacefs that, besides offering a unique perspective about themes of national relevance, can also be employed as robust training programmes and institutional development. TCU coordinated audits in the oil and gas sector, with the participation of the SAIs from Peru and Colombia. Prior to the field work, specialized consultancy carried out a comparative diagnosis of the sector in eight Latin American countries. The results supported an international seminar about the theme, held in Brasília in May 2013, when a joint audit planning was carried out. The works will round off with the preparation of a consolidated report for the first half of 2014.

With the participation of the SAIs from Argentina, Brazil, Paraguay and Peru, another coordinated audit initiated at Olacefs in 2013 examined the theme of water resources. We supported the Argentinean coordination with specialized auditors who conducted the online and classroom trainings. The consolidated report, which will also be completed in the first half of 2014, will provide a regional overview on the theme, which is contained in the Millennium Development Goals.

One of our main priorities for 2014 concerns the continuity of the audits. An initial audit will address the theme of biodiversity, focusing on the conservation units of protected areas, and will be coordinated by the Paraguayan SAI. Once again, TCU is supporting the process by conducting courses and a technical seminar, besides sharing the experience of similar audits performed in the courts of accounts in the Brazilian states of the Amazon region.

The second audit will be on information technology (IT) governance, under the coordination of TCU itself. It will be able to transfer to the SAIs in the region its expertise on supporting the bodies of the Public Administration towards the improvement of the management processes and use of IT solutions.

On the other hand, TCU will also take part in the coordinated audit of a regional subgroup of Olacefs, the Organization of Mercosur and Associated Supreme Audit Institutions (EFSUL), concerning the public works financed by the Fund for the Structural Convergence of Mercosur (Focem). Additionally, there is broad interest in performing a coordinated audit in the area of education at Olacefs, to be completed in 2015.

The seeds have been sown and the aim now is to enhance, jointly with the Olacefs Capacity-Building Committee, the use of coordinated audits such as training and institutional development programs, combining fieldwork with classroom training and online courses. Supported by GIZ, TCU has designed four new online courses that were or are being offered in Spanish in 2013 and 2014 to give support to auditors from several Olacefs countries: Excel 2007 Applied to Audit, Public Work Audit, Biodiversity Audit and IT General Controls Audit. Moreover, in 2013 and in the first quarter of 2014, TCU offered three training courses in Performance Auditing, during which 331 auditors from all 19 Spanish speaking SAIs from Olacefs were trained.

I emphasize that the coordinated audits and the online courses often seek to comply with the Intosai International Audit Standards (ISSAI), developed in conjunction by the SAIs of the International Auditing Community, in order to think over the best practices and guide the evolution of the work processes of the entities. The initiative for the ISSAI (3i Programme) Implementation was developed by Intosai to support the SAIs in this modernization and improvement challenge.

In 2013, the Presidency worked hard in close cooperation with IDI and with the Working Group for the Application of the International Audit Standards (GTANIA), to bring the 3i Programme to Olacefs.

Now in 2014, the fruits of such endeavour are being harvested. The programme was virtually launched in the Olacefs 3i Programme Workshop, which was held in March 2014 in Brasilia for the Olacefs leaders. From the 20 SAIs eligible to the Programme, 19 took part in the Workshop and 17 have already signed the Programme compliance commitment agreement – participation fees totally unprecedented in any Intosai region.

Another international public asset of great impact that we are helping to spread at Olacefs is the Performance Measurement Framework (SAI PMF), a tool designed by the Intosai community for its members' self-evaluation. TCU has been contributing to the development of SAI PMF, including the assignment, on a part-time basis, of a specialized auditor to work with IDI to improve the methodology and the training of the professionals in the SAIs. In connection with the coordination of the Olacefs Committee on the Performance of Supreme Audit Institutions and Performance Indicators (CEDEIR), we have been promoting the use of such a tool in the area. In 2013, TCU itself employed the SAI PMF pilot version, which was the largest pilot ever undertaken in the world.

To crown it all, our participation in the XXI Incosai - Intosai Conference, held in Beijing, China in October 18, 2013 was a great success. The event, held every three years, seeks to promote the exchange of experiences between audit entities worldwide. Besides, it is in this conference that the auditing standards applied in more than a hundred and ninety countries are discussed.

At Incosai, around 160 heads of the 192 superior audit institutions (SAIs), as well as associate members and multilateral agencies discussed solutions to improve world public administration. Demonstrating our adherence to the international trends, the Conference had as main themes the governance and sustainability of the financial policies and it offered a great opportunity for free exchange of experience and best practices among the SAIs of the five continents.

The "Global Call 2013" by the Intosai Donnors Committee was launched during the Conference, offering the members of Intosai the opportunity to submit project proposals to be funded. The first proposal received by the Committee, which concerned the funding of 3i Programme for Olacefs, was then delivered.

In recognition of the visible progress made by Olacefs and of its prominent position in the international oversight community, we were honored to be unanimously elected Vice-President of the Conference. In addition, during the event, we presided the conference on an especially significant day in which Intosai's international standards were approved.

Diálogo Público travels the country to promote improvement in public governance

The program "Diálogo Público" (Public Dialogue) is intended for guiding public managers, in order to contribute to the improved performance of public policies. For the years of 2013 and 2014, the topic chosen was "improved public governance".

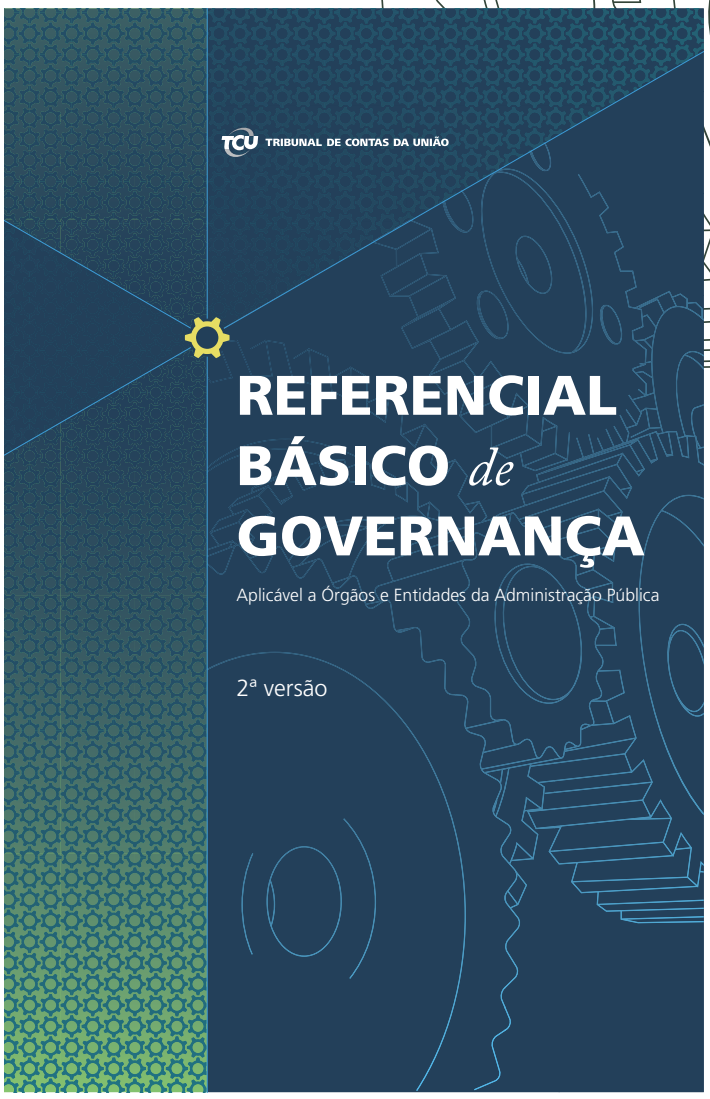
With such events, TCU seeks to act more pedagogically in order to provide assistance to managers in the adoption of actions that avoid, still in the source, possible irregularities.

In 2013, 14 events were held, seven of which were in Brasília and the other seven in other states (Rio Grande do Sul, Pará, Bahia, Pernambuco, Rio de Janeiro, Manaus and São Paulo). Approximately five thousand public agents attended the meetings, including mayors, secretaries of state, public managers, independent professionals and college students. For 2014, new events are expected to be held in Brasília, as well as in the states of Rio Grande do Norte, Santa Catarina, Paraíba, Mato Grosso, Paraná, Maranhão and Acre.

In such meetings, concepts of governance, risks and controls are presented, so to contribute to the management improvement.

Furthermore, there is the opportunity to discuss with managers ways to mitigate risks from controls that must be adopted in areas, such as bidding processes, agreements and covenants, as well as other topics of local relevance.

Publication lists good practices on public governance



The Federal Court of Accounts (TCU) published a document listing good practices in public governance. Such practices, if complied with, may increase the quality and efficiency of public policies and of services rendered to citizens.

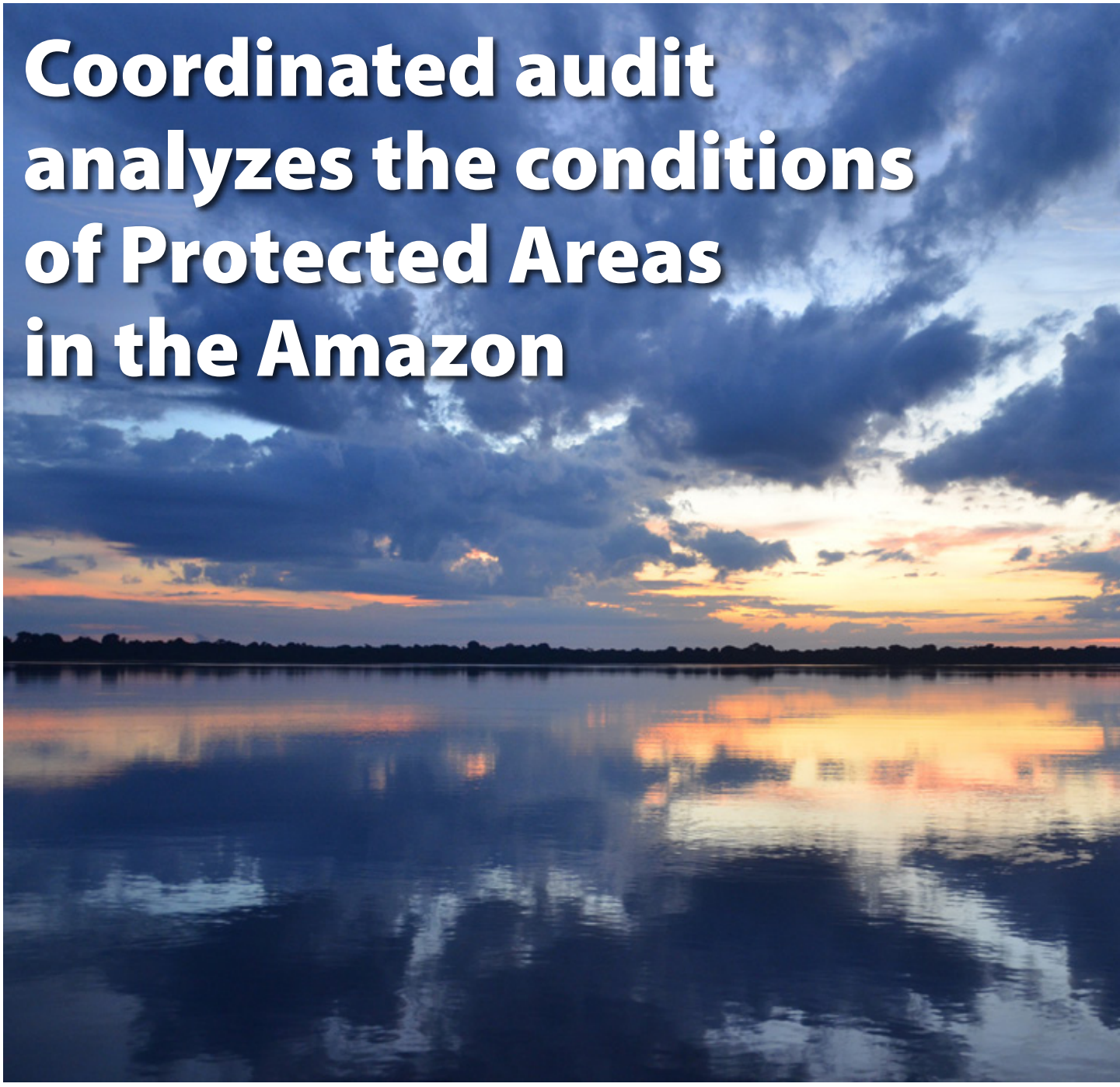
The Basic Reference of Governance Applied to Government Agencies and Entities must be complied with by the court in actions for controlling and improving processes that directly or indirectly refer to governance.

The president of TCU, minister Augusto Nardes, asserted: "Good public governance implies strong and ethical leadership, committed to results; clear, integrated and efficient strategy, aligned with social interests; and control structures that allow following up actions, monitoring results and timely correcting paths, when necessary. Thus, this alone is the purpose of this publication, to contribute to improved governance in the public sector in favor of the Brazilian society".

The Reference is organized in three chapters, with the summarized concepts of governance, principles and guidelines and governance components that apply to the federal government agencies and entities.

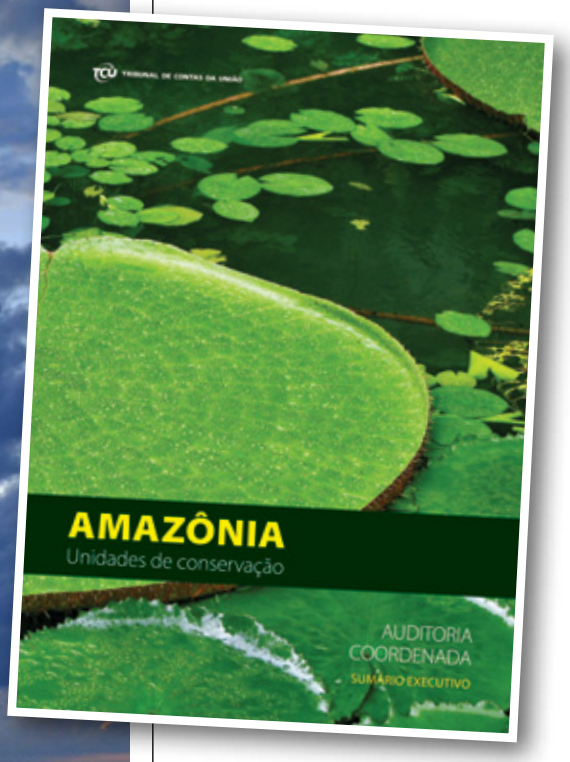
The publication is available for free download at TCU Portal.

Coordinated audit analyzes the conditions of Protected Areas in the Amazon



The Federal Court of Accounts (TCU) carried out, in 2013, together with the courts of accounts of nine states, an extensive audit in the Amazon's Conservation Units (UCs). Nowadays, the region has 247 units, which include national parks, extractive reserves and national forests. The audit identified deficiencies in the management and implementation of units, as well as shortfall of financial and human resources, low levels of tourist visitation and deficiency in the handling plans.

UCs are protected spaces that seek to favor the environmental protection and sustainable use of resources. They also have the potential of economic development, employment generation and improved quality of life of populations living close



thereto. In the Amazon, they play an important role in reducing deforestation and in decreasing greenhouse gases released.

The work, performed for one year, identified that only 4% of the conservation units in the Amazon have an efficient management, with proper handling plans implemented, rural regulations in process, servants and resources necessary for maintenance. 40% of the Conservation Units in the Amazon have a handling plan, a document which defines the specific plans for each unit area and its operating rules.

For the judge-rapporteur of the process, substitute minister Weder de Oliveira, "The lack of a handling plan is an obstacle practically impenetrable for reaching the purposes of the conservation units. Without establishing due zoning, rules that guide the use of each area, and rules for using natural resources, as well as establishing the definition of the physical structure necessary for managing the unit, it is really difficult to clearly and accurately measure each conservation unit's need for financial and human resources".

LOW TOURISTIC IMPROVEMENT

The audit identified a low touristic improvement in UCs, since in the 18 national parks of the Amazon, there are no activities of environmental education and interpretation or of recreation and ecotourism. In order to seek a cure for the problem of tourism and lack of visibility given to the Conservation Units, ICMBio created the project "Park View", together with Google. The action contributes to disclosing UCs, which are in the majority national parks, by providing to the user a virtual tour.

As result of the audit, TCU suggested that the Ministry of the Environment and Chico Mendes Institute (ICMBio), which are liable for UCs, prepare actions for allowing the best use of the 247 federal and state Conservation Units of the Legal Amazon. The agencies must disclose and disseminate the knowledge about the areas to society, in addition to increasing the economic use of the regions and providing conditions for them to reach the purposes intended.

The court also determined that ICMBio must prepare the management plans, aiming at the improved economic, social and environmental potential of such areas and that it must study with the Ministry of Tourism ways to implement pilot projects seeking alternatives for visitation and recreation in the conservation units of the Amazon biome.

Olacefs holds its 23rd General Assembly

The City of Santiago, in Chile, hosted the 23rd General Assembly of the Organization of Latin American and Caribbean Supreme Audit Institutions (Olacefs), held from 12/08 to 12/11/2013.

During the Assembly, there was discussion of topics, such as tools for preventing corruption, citizen's participation, assessment of performance of the Supreme Audit Institutions (EFS) and environmental issues.

Approximately 150 representatives of the 24 audit institutions that compose Olacefs, experts, representatives of international agencies and of other audit institutions of countries like China, United States, France, Suriname and South Africa attended the meeting.

XXIII Asamblea General Ordinaria OLACEFS 9 - 12 DIC 2013 Santiago - Chile

At the event opening, the president of TCU and of Olacefs, minister Augusto Nardes stated that the cooperation among the audit institutions, the national and regional governments and the global multilateral institutions is crucial in order that the control institutions are strengthened, seek excellence and are able to increasingly generate positive results that benefit society.

The president claimed that: "Such excellence must be able to ensure and increase the social achievements, as well as to produce new development levels, offering to the population high standard public services, particularly of health, education, public safety and urban mobility".

President Nardes defends improved public governance as the path to reaching the development intended. And the participation of the supreme audit institutions would be a condition precedent for Olacefs to be able to operate as a driving force in such new agreement for governance. He stated that: "We have the duty of leading this movement for improving the public management in the entire continent. What we all want, without any doubt

whatsoever, is a Latin America that is fairer and more plural. A continent that belongs to everyone".

The integration of the Latin American countries was also the focus of the speech by the president of Chile at that time, Sebastián Piñera, who participated in the opening ceremony. "We share many things. A common history, as well as a vast and rich territory. And, most important of all, a promising future that knocks on our doors".

According to Piñera, the assembly of Olacefs represents a privileged instance for integration and dialogue among the attending countries. The former Chilean president stated that: "It is a great opportunity, not only for conducting diagnoses, but mainly for identifying problems and sharing good practices that may perfect the control institutions, so that honesty, transparency and efficiency of the government are strengthened after such meeting".

SOCIETY

the general controller of Chile and executive secretary of Olacefs, Ramiro Mendoza, discussed the recent changes in society and the impact of such transformation on the control agencies. In Mendoza's opinion, the core of such changes lies in the existence of stronger citizens and civil society, which not only require the benefits of public policies, but also the participation in their definition, enforcement and assessment.

In view of such new scenario, Mendoza stated that the audit institutions started to articulate strategies. One example is the Beijing Statement concerning the promotion of good governance, signed as the result of the last congress of the International Organization of Supreme Audit Institutions (Intosai), held in China, in October 2013. He explained that "It is possible to say that we are turning into states that endeavor to see difficulties and whose focus is the discovery of keys to good governance as the driving force of a true development".

The general director of China's national audit institution and general director of the international cooperation department of Intosai, Zhou Weipei, also participated in the ceremony and pointed out that, over the last fifty years, Olacefs has had prominence among the regional groups of Intosai concerning cooperation and exchange of knowledge and experience among countries. Furthermore, Weipei emphasized the interaction between Olacefs and Intosai in relevant works and agreements in areas, such as prevention of corruption and of money laundering. According to him, "All such efforts play a positive role in the sense of encouraging nations to establish efficient, clean and financially sustainable governments".

The next Olacefs General Assembly will be held in November 2014 in the City of Cuzco in Peru.

Foto oficial da XXIII Assembleia-Geral da OLACEFS.

Contralor Geral da República do Chile, Ramiro Mendoza e o Presidente da OLACEFS, Ministro Augusto Nardes, na abertura da Assembleia-Geral da OLACEFS

Distance learning courses qualify public servants and municipal council members

To promote improved public services by qualifying the service provider is one of the aspects prioritized by the Federal Court of Accounts over the last years. For doing so, the court continues offering distance learning qualifying courses on subjects that are directly connected with the daily activities of the servants and with the public managers.

The purpose of the courses is to disseminate legal rules and good administrative practices that must be complied with by all servants in their duties and, thus, contribute to the proper and regular investment of public funds.

The courses are introductory in areas of governmental relevance and interest. In 2014, for example, classes, such as "Government management structures", "Controls in the Government and Governmental Planning" and "Budgetary and Financial Management", are offered.

The program for qualifying public servants and managers was created in 2009. Since then, more than 94,000 vacancies were already offered for all Brazilian territory. For 2014, there is expectation of additional 14,400 vacancies, but the purpose is to increase such number by means of partnerships and by offering self-instructing courses.

Federal, state and municipal servants may participate, regardless of their place of performance, since classes are given online.

QUALIFICATION FOR MUNICIPAL COUNCILS

another public served by the distance education actions are the members of the municipal councils of social assistance. The course "Control Exercised by Councils of Social Assistance" intends to reinforce and update information so that they may optimize the provision of services to society.

The Municipal Councils of Social Assistance are liable for exercising the guidance and control of the Social Assistance Funds, in addition to overseeing social assistance entities and organizations, among other duties.

Among the subjects discussed in the qualification, there are: social assistance in Brazil, control models, performance of members of the municipal councils of social assistance and follow-up of the management of Bolsa Família Program (a social welfare program), as well as of the Social Assistance Local Fund.

The course is intended for council members, but any citizen interested in the subject may enroll himself or herself. The courses offered by TCU are free of charge and since they are online, there is no expense with transportation related to classes or assessments. For more information or enrollment in one of the courses offered by TCU, just go to www.tcu.gov.br and click at "Corporate education".

Audit assesses the service delivered by regulatory agencies

With the purpose of assessing the performance of regulatory agencies as to the quality of the service to the user, the Federal Court of Accounts (TCU) conducted in 2013 an operational audit in four Brazilian agencies, which act in the areas related to telephone, cable TV, air transport, electric power distribution and fuel distribution and resale.

According to the process judge-rapporteur, minister Aroldo Cedraz de Oliveira, it is necessary to increase the customer relations devices: "the direct and indirect instruments used by regulatory agencies in the relations with users must mandatorily provide the maximum increase of democratic participation of such interested parties in regulating services that are rendered to them".

TCU listed five main topics that the regulatory agencies must take into consideration when preparing their plans. The first one is the improvement of devices available for gathering expectations and desires of the service users. Another topic is the improvement of consultation and public hearing processes, allowing the increase of participation of users, whether directly or by means of organizations representing their interests, in the preparation and presentation of contributions.

The third topic suggests the performance of customer satisfaction surveys, based on defined indicators. The fourth one encourages the improvement of regulatory, overseeing and sanctioning procedures in force, allowing a more efficient answer to users concerning the provision of services.

The last one emphasizes the need to strengthen the role of offices of the ombudsman, given the importance of accessing information, even formalizing the inclusion of such offices in the decision-making process, in order to allow, for example, them to implement suggestions or reviews prior to the rules and planning of overseeing and educational actions.

TCU determined that the National Agency of Civil Aviation (Anac), National Agency of Oil, Natural Gas and Biofuels (ANP), National Agency of Telecommunications (Anatel) and National Agency of Electric Power (Aneel) must individually submit a plan of action in order to increase the quality and efficiency of performance in the service to their service users.

TCU will plan a new audit in regulatory agencies, this time with the purpose of assessing matters related to the actual oversight performed by such agencies in the quality of the services rendered in their areas of performance.

People management in the government is still "rudimentary"

People governance may be deemed the set of guidelines, organizational structures and control processes and devices aimed at ensuring that the decisions and actions related to people management are aligned with the organization's needs, contributing to maximize the value of human capital that, in the final analysis, determines the capacity to render services to society.

For analyzing the situation of people management in the government, the Federal Court of Accounts (TCU) conducted an assessment, from 09/2012 to 09/2013. The conclusion is that such situation in the Federal Government is inadequate.

Among the 305 organizations analyzed, only 7.6% are in an improved stage of capacity in people governance. In most part of the federal government, there seems to be a shortfall concerning the professionalization of people management. In most cases, the typical activities of the personnel department seem to be well managed, but the strategic people management is rudimentary.

Some of the critical aspects pointed out are that 54% of the units analyzed fail to set forth individual or group performance goals, 65% fail to assess the performance of top management members or of other managers and 46% even fail to assess the performance of the servants.

As positive practices, 75% of the organizations adopt the code of ethics, 54% monitor the compliance with guidelines and 58% conduct audit in payroll.

In relation to talent management, 75% of them are in an initial stage. According to the report, "the information shows that the capacity of APF to attract, select and preserve professionals with adequate skills is very low". The same percentage was found in relation to the failure to appreciate skills in selecting managers.

The substitute minister Marcos Bemquerer Costa was the judge-rapporteur of the process in TCU and pointed out that a good people management is important for the entities and government agencies to render good services to society. Bemquerer made the following comment: "Furthermore, we have

several other types of focus, for example, how people are hired, trained and assigned. It is the situation of putting the right people in the right places. If the coach of the Brazilian soccer team put Neymar to play in the goal area, it would show his failure to manage a great talent".

In order to solve the problems, some of the main suggestions from the Court of Accounts were that the agencies should guide their subordinate units in formally setting forth purposes, indicators and goals in people management and that they should start considering skills while selecting managers. To systematically conduct internal audits in the governing agencies and to adopt actions for ensuring the offer of qualification in strategic planning are also important suggestions. At last, the Federal Budget Department received instructions for defining criteria for allocation of public funds for investment in personnel, according to the capacity of the organizations to convert such funds into the intended benefits.

The Federal Court of Accounts (TCU) determined to strategic agencies of the Federal Government, such as the National Council of Justice (CNJ) and the National Council of the Prosecution Office (CNMP), the forwarding of a plan of action for curing inadequacies concerning people management.

Social education: preparation of students and teachers to exercise Public Management Oversight

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ABSTRACT

Given the current scenario of social uneasiness, this paper is targeted at introducing the project Social Education (*Educação Social*) by way of the speech entitled Routes to Citizenship (*Caminhos da Cidadania*). Focusing on the transition of public schools' students in the State of Ceará into Citizenship Agents. Note that the program's ideation revolves around the concept of control based on the assumption that it represents an activity which goes beyond the role played by internal and external control agencies of the government. Additionally, this effort, concocted by the Comptroller's and Complaints Office of the State of Ceará, by means of the Coordination for Furtherance of the Social Control (*Coordenação de Fomento ao Controle Social*), disseminates a powerful knowledge of public management, not mentioned in school syllabi, and makes the advocacy media developed available to schools. On account of that, the objective of this study is to expose how the project attempts to universalize the role of the complaints offices, the transparency portal, and public policy committees, as well as the development and unveiling of concepts that are not usually addressed in classrooms, such as, without limitation, the Multiannual Plan, the Budget Guideline Law (LDO) and the Budget Law. The underlying principle is to raise the interest of students

and teachers about the government issues and social advocacy tools as a route to be active in building up an exemplary society in the coming future.

Keywords: Citizenship. Education. Social Control. Students. Teachers.

1. INTRODUCTION

The effort to introduce to public school students the debate about Social Control, summoning them to play an active role in controlling the government affairs, may not be understood taking for granted the development of the social and legal environment entailed by the 1988's Constitution of the Republic and added up by the legal instruments arising out after its enactment. Let us briefly review these years of profound changes.

When outlining the cornerstones of Democratic State Ruled by the Law, the Constitution established, in Article 1, that citizenship was one of its founding principles. In the following paragraph of the same article, it has averred that all power emanates from the people and will be exercised directly or through their representatives. At least from the perspective of the legal system, this has set the stage for a new moment when the patrimonialist view of management gave way to a new essentially-democratic administration modality. There is no other reason why our Great Charter is often referred to as the Citizen-bound Constitution.

Needless to say, speaking of democracy without the people's participation would sound unreasonable. Also, in a Democratic State Ruled by the Law, the participation in the government affairs is not merely embodied by the legal instruments required for this intervention. Heedful of these requirements, the member of the original constitutional convention outlined the lines of legislative performance which would be in practice later on. Some legal frameworks which properly portray the lawmaking work are worth mentioning. Firstly, the Fiscal Responsibility Law (Supplementary Law 101/2000) has established more stringent rules for the fiscal management responsibility; subsequently, it was demanded that detailed information on budget and financial execution by the Federal Government, the States, the Federal District and the Cities be made available (Supplementary Law 131/2009); lastly, it has been established a legal environment favorable to the company's participation through the Information Access Law (Law 12527/11), providing for the access of users to administrative records and information about governmental acts, thus regulating the constitutional provisions in Item XXXIII of Article 5 and Item II of paragraph 3 of Article 37 of the Federal Constitution.

Given the legislator's work, the government was charged with the responsibility to put constitutional orders into practice, bridging the distance between the legal and the real world realms. In this sense, complaints offices have been structured throughout the years, designed for playing a mediating role between citizens and the government; thus standing as virtual forums for disclosing and providing access to information. In addition to this, debate forums have proliferated, in an attempt to unshroud concepts which were a privilege only of professionals in the accounting, financial and legal areas by that time. Now and then, a government instance innovates in information disclosure, coming up with a more didactic form. In practice, the background of all of these efforts was to raise the citizens' awareness on the relevance of taking on an active stance in public management choices.

In this path, difficulties have been posed on the government to develop innovative efforts. The following may be pointed out forthwith: finding adequate means to broaden the level of understanding of a society which have long been uninvited to participate in government decisions; developing Information Technology environments compatible with the emerging demands; applying a language which is fitting for communication with regular citizens, principally youngsters; and furthering an administrative environment that deals appropriately with social demands. The government, attentive to these issues, may not take for granted other matters which may derive from the widespread participation.

Developing methodologies to include the society as a whole, considering that its transitions make rapid strides, resulting in a difficult task. Not to mention the centuries of people's alienation from a government long committed to a patrimonialist management praxis where managers openly misappropriated public resources as things without owners.

In the specific case of the State of Ceará, the closeness between the activities of the Complaints Office and those of the Internal Control, which has led to the inception of the current Comptroller's and Complaints Office of the State of Ceará should undoubtedly be characterizes as a prolific effort, insofar as it bridges the distance between "the voice of social control" and the internal control's efforts. Additionally, the concerted work of the Coordination for Furtherance of the Social Control — responsible for activities which were previously performed by the General Complaints Office — and the Complaints Offices of several state offices, in a smart and systemic configuration, perhaps stands as the sole idea which has most significantly drawn near the government affairs and the public at large.

There is no doubt that the Constitution of the Republic of 1988 introduced a Democratic State Ruled by the Law. Nonetheless, this assertion is as safe as the assumption that the substantiation of this government calls for a change of mentality, not only by managers, but the people as a whole. People may not refer to public property as something distant, of an undefined owner, barely ownerless. The public property belongs to the society and no one can control it better than the citizens themselves. In this sense, the choice of the school environment to develop the project and associated speech Routes to Citizenship may be seen as strategic. The Citizenship Agents, as the participants are referred to, are educated in these schools. Therefore they are of paramount importance as one of the main outlets of social transform, even nowadays.

The term Social Education epitomizes the expectations of full development of students to exercise citizenship. This preparation motivate young students and teachers to be acquainted with the government efforts, whereas stands as the means of facilitating advocacy on the State for an effective social control.

2. THE PROGRAM'S CONCEPTION AND PERSPECTIVES

Everyone who is engaged in education coveys knowledge through information. This simple assertion allows us understand that the choice on what to teach may somehow foretell what society we are designing for the future. When selecting the information to be passed on the students, there is no question about the current disapproval of a pedagogy which maintains the conveyance of a merely individualist knowledge, not taking into consideration the possibility to impact the society as a whole. Information should relay knowledge which raises not only good professionals, but, over and above, active citizens.

Targeting at this goal, the Social Education project has managed to shed light on a gap of the educational system, and envisioned the opportunity

to develop and engage a great number of participants in the huge task of controlling government efforts. In point of fact, this is not about an intervention in school syllabi, adding one subject or another connected to public finances, but, instead, to disseminate information about the government affairs, resorting to an accessible language, which is consistent with the mission of educators. In a nutshell, we could affirm that the control agencies have a "knowledge background" in public interest and the best outlet to convey it to schools. This does not signify that schools are seen monastically and autonomously in their task to include socially and quelling poverty or, as depicted by Mario Sergio Cortella (2013, p.110), they are not seen with "a naive optimism." Apart from it, the objective of this paper is to contribute, under the competencies of the control agencies, to the mission of schools as institutions responsible for educating citizens, albeit they are not the only ones.

Several players, from various state offices, in a concerted effort spearheaded by the he Comptroller's and Complaints Office of the State of Ceará, seeks to impact the public state teaching network. For this effort, the support of the Elementary Education Office, having more than seven hundred and three (703) schools, has been a significant aid for success. Education opens doors for a new pedagogical experience and new information with only one underlying foundation: to form citizens.

An internal control agency advocating the task to disseminate the social control culture, for students and teachers to turn into participants in the government decisions, may sound as a groundbreaking step. However, from the point of view of educators, a citizen-bound education is not seen as a foreign element. For instance, the assertion of educator Maria Lúcia Arruda Aranha, demonstrating the concern to convey values and the resort to different media beyond the traditional ones to mold citizenship:

> Needless to say we are not proposing a syllabus consisting of several subjects administered through the traditional method of isolated classes. The questions about the conveyance of cultural values and the discussion about them may "cross" all of the other subjects: the formation of citizens is one of the objectives of every teacher. Besides this, schools may find creative — and not academic — means to discuss cultural heritage, commonly disseminated externally by the disclosure pipelines of the society itself. This is the very reason for the several pedagogs who have been warning about the need to overcome the teaching of subjects by introducing projects which mold a more active educational practice. (ARANHA, 2013, p. 364)

In fact, ombudsmen of several government areas, in concert with educators, deal with a common idea: the widespread participation is prone to develop a fairer and more efficient and democratic government. This is the motto preached in speeches.

As averred, the contact with public happens through speeches, addressing subjects which further the social control and inviting participants into the debate. Through this methodology, it is not a one-way approach, where students are the center of the entire work, both from the point of view of providing information and from the acceptance of demands. In this sense, the widespread participation ultimately yields an immediate outcome, namely the possibility to improve the very program.

After the phase of project preparation, speeches have begun on September 24, 2013 with a little hiatus due to ENEM — the National High School Examination. Until November 8, 2013, seventy four (74) events have already been held, totaling six thousand, five hundred and fifty one (6551) students reached.

By the end of the speeches, facilitators hand out the leaflet Routes to Citizenship (*Caminhos da Cidadania*), establishing, in an objective and illustrated language, information about citizenship, social control, ethics, information access law, combat against bribery, Transparency Portal, Complaints Office, public policy committees, electoral process, in addition to informing which the internal and external control agencies of the government area.

The future is to spread the program beyond the metropolitan area of the city of Fortaleza, in the State of Ceará, and, subsequently, cover city schools and private schools. Other public entities may join the effort throughout its development, such as municipalities, the Judiciary and Legislative Branches and the Prosecutor's Office.

Although it has already achieved outcomes, the program is still in the pilot stage. In every step, the outcomes are assessed and adjustments are made

to contents, language and players involved. The outcomes achieved are the theme of the topic below.

3. CONSEQUENTIAL AND IMMEDIATE OUTCOMES

The immediacy of outcomes may not be the focus of a program for educational purposes. Nowhere in the world will education keep up with the "give-and-take" rule. Outcomes are certain, but not tangible in their real dimension or nature, without some time to develop. It should be underscored that only time will tell the true quality of its "fruits". As a matter of fact, not one society investing in knowledge impart has failed to obtain good results on average-sized or long runs; and there is no evidence that any nation which has bet on the people's participation in the government affairs and achieved unfavorable results. There are the consequential results of the program, which are not seemingly accurately measurable.

Notwithstanding the above, some parameters may and should be checked to somehow guide future efforts and facilitate, from time to time, the required changes for the program's success. This way, variables such as the number of demands in SOU (State's Complaints Office System), the receptiveness of students, the degree of popularity of some of the tools used, such as the Transparency Portal, Facebook and telephone lines, may be a hint of the level of impact caused. In this vein, over the performance of the events, to have a feedback of participants, students are questioned the following: "Have you ever heard of Social Control?"; "Which service do you know in the State's government?". Lastly: "Did you enjoy the speech Routes to Citizenship?". Afterwards, students are free to make any suggestions.

In a first interview with one thousand, eight hundred and nine (1,809) students, overall one thousand, one hundred and thirty-three (1133) of them pointed out the Complaints Office and the most known communication channel with the State Government. The Telephone Service of the State's Complaints Office ranked two, posting 283 nominations, by means of telephone number 155 and, in the third place, the Transparency Portal, with 263 votes. Speech Routes to Citizenship achieved an approval of 88% among students interviewed. All of these surveys were carried out by the Social Control Coordination.

An immediate outcome, spotted after the program's deployment, lies with the significant increase in the number of demands to the Complaints Office System. For instance, telephone calls in October 2013 posted a total of 2668 cases vis-à-vis 1554, in the same period of 2012. This represented an increase of 71.68% in the month when speeches were held. Considering the same comparison period and all of the media of advocacy on the government, notably the 0800 *Disk Acessibilidade*, email, Facebook, presential and phone service, the increase of cases reached 42.37%[1].

These outcomes are a clear display that the project points to an abounding path, which does not entail the idea that the government may take for granted new demands. As important as motivating people to be engaged in the so-called Social Control is to be prepared to give citizens responses consistent with their participation. Furthermore, the intention — which may stand as an actor catalyst of social transform —, is a substantial social control, not only a formal one. In other words: it is not enough to give citizens their right of way but allow actual possibility to influence decisions. Insofar as people realize their participation is significant to the field of political and administrative decisions, they certainly will resort to less conventional media other than institutions, which may not necessarily be the most effective ones.

4. CONCLUSION

History of mankind shows that peoples alienation from the government's decisions has never achieved sound results. It is no wonder that democracy is questioned here and there, as its status of exemplary way to exercise power, but, notwithstanding the indirect and direct people's participation in the public interest affairs is advocated. This participation winds up raising the collective awareness that they belong into a group, into society. In this sense, there should be no reasons as to the government's duty to provide the necessary media for citizens, aware of their rights and duties, exercise citizenship to its fullest extent. This knowledge, in addition to facilitation social coexistence, empowers people to act consciously and responsibly toward public property.

Imparting knowledge on public management to students caters for two emerging needs at once: on one side, an education model which develops

citizenship — as provided for in the very law of education guidelines and foundations (Act 9394/96) —; on the other hand, the drawing of a great number of participants, enthusiasts of an ideal of democracy, to improve social control.

The Social Education project, insofar as building up Citizenship Agents, contributes to concoct a new public management paradigm, furthering the popularization of media of advocacy on the government. Particularly, the school environment showed to be concerned about the government decisions as it evidenced a great closeness to the main channels of communication and the government. According to surveys, students pointed out the Complaints Office, the Telephone Service of the State's Complaints Office and the Transparency Portal as the main media of advocacy used.

It is believed that the program as a whole will definitely contribute to build a more participative society, committed to the government decisions. It may be asserted, based on history, that a certain degree of certainty applies to the refutability of the idea of an efficient, fair and democratic government making decisions far from the people, without an actual social control. This is the expectation of the Routes to Citizenship.

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NOTE

1 The outcomes of these surveys and others are ascertained and disclosed at the website http://www.cge.ce.gov.br/index.php/noticias. Accessed on November 13, 2013.

TCU and its "non-mandates"

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ABSTRACT

Contrary to what many people believe, the powers constitutionally granted to the Federal Court of Accounts of Brazil (TCU) do not comprise every matter regarding the management of money or property of the federal government. The Court's monitoring powers have clear limits when it comes to matters that do not concern external control, such as tax, criminal and labor demands. However, there are areas where such limits are not so precise. The Court has been issuing resolutions that seek to more strongly mark off the actual limits of its powers in recent years, affirming not to be of competent jurisdiction to judge such matters. This article presents some limits of the competent jurisdiction of the Federal Court of Accounts of Brazil, including some controversial matters that its ministers affirmed to be out of TCU's scope of monitoring powers.

Keywords: External control. Federal Court of Accounts of Brazil. Jurisdiction. Limits.

1. INTRODUCTION

Article 71 of the Constitution grants the Federal Court of Accounts of Brazil monitoring powers, which can be summarized as follows: to oversee the investment of funds of the federal

government and evaluate the accounts of administrators and others responsible for the money, assets, and values of the federal government. The other courts of auditors in the country hold similar powers and what sets each one of them apart is the ownership of public resources under their competent jurisdiction.

TCU's competent jurisdiction is not automatically initiated by the mere existence of federal resources. It is also necessary that the matter under discussion is included among the powers granted to the Court according to Article 71 of the Federal Constitution. That means that not every investigation of irregularities in the use of funds of the federal government shall be subjected to TCU. Tax or criminal matters, for example, are not under the external control exercised by the courts of accounts. Even administrative matters can often be outside the limits of such control. In a 2004 full court trial, for example, the Supreme Court vetoed the TCU to meddle in decisions regarding the desirability and advisability of decisions made by the public administration, even in cases where federal funds were involved[1].

The following paragraphs discuss the most controversial limits among those that the Federal Court of Accounts of Brazil affirmed it was out of their competent jurisdiction to judge them, despite seeming otherwise. Such funds may either not be understood as federal government funds, or the monitoring of its use is outside TCU's scope of external control monitoring body.

2. FINANCIAL TRANSACTION WITH OFFICIAL BANKS

Financial institutions like *Banco do Brasil* (BB), *Caixa Economica Federal* (CEF) and *Banco Nacional de Desenvolvimento Econômico e Social* (BNDES) are under the competent jurisdiction of TCU because they have federal assets and their transactions manage federal funds. Nevertheless, TCU's external control is not

Table 1
Competent jurisdiction of the Courts of Accounts in Brazil

Court	Location	Holder of Public Resources Under Jurisdiction of the Court
Federal Court of Accounts of Brazil	Brazil	Federal Government
State Court of Accounts	One in each state plus the one in the Federal District	State or Federal District where the court is located. In states where there is no municipal court of accounts, the competent jurisdiction is of the State Court of Accounts
Municipalities Court of Accounts	Bahia, Ceará, Goiás and Pará	Municipalities of the state where the court is located
Municipal Court of Accounts	Cities of São Paulo and Rio de Janeiro	Municipality where the Court of Accounts is located

extended to the monitoring of the implementation of such resources.

Loans and financing granted by federal banks have basically three recipients: individuals, private companies and government agencies. Whenever controlling these transactions, TCU's role is restricted to the examining of the legality, legitimacy and purpose of the operation, overseeing that they do not end up being detrimental to the bank and, therefore, to federal government. In summary, the Court evaluates three requirements: if there was compliance with the rules of the bank to ensure the correctness of the transaction; if the collateral offered by the credit borrower is sufficient and payable; and if the funds met their intended purpose, since TCU does not accept, for example, that the bank employs such funds for a different social program than it was intended to or an incentive given to a different economic activity. However, once these requirements are met at the grant stage of the financial transaction, TCU's competent jurisdiction to oversee the investment of funds is over. This is due to the fact that, from the moment it leaves the treasury of the official bank, the money loses its nature of federal fund. Either it becomes a private resource, when granted to an individual or a private company or the competent jurisdiction is then transferred to the corresponding court of accounts, in cases where the money is granted to a state, the federal district or a municipality.

Minister Valmir Campelo's prevailing opinion of Resolution 3067/2012-TCU-Full Court is very clear about it: "It is worth repeating that under these situations in which the federal government investment is limited to the financing of federal banks, it is up to the TCU to assess the regularity of such credit transactions, only in its constitutional limits, which involves examining the funds and the collateral offered."

Only under two circumstances do the funds remain under the competent jurisdiction of TCU after being released: the first is whenever the credit or financing borrower is part of the federal government itself and is under the competent jurisdiction of the Court, such as Petrobras or *Companhia de Docas de São Paulo*. The second occurs whenever the operation is identified as a fraudulent one and an employee of the financial institution is involved. In this case, the TCU can exercise its competent jurisdiction in order to prosecute and punish those responsible for the damage. The prerogative of the Court is provided for in its regulation that authorizes the joint responsibility of «the public official who commits the irregularity» and «the third party, such as the contracting party or the individual interested in the irregularity that in any way that contributed to the assessed damage»[2]. While examining *Banco do Brasil*'s financing of the state of Pará's navigation company in 2005 TCU identified fraudulent procedures committed by the company's representatives alongside with the bank managers. The Court then determined that the responsibility was of the managers as well as of the company's representatives, and ordered them to give the fraudulently obtained funds back to the treasury (Resolution 39/2005-TCU-Full Court). Substitute-minister Lincoln Magalhães da Rocha recalled that investigated the facts did not deal "merely with unsuccessful trade operations due to default of the company's representatives, which would only be under the competent jurisdiction of courts of general jurisdiction, but it dealt with the commission of serious offenses against the Public Administration, which partially owns this Bank, [...] thus damaging the treasury, since most of these funds make up the assets of the federal government."

However, if an individual or the company borrowing the resources alone commits the fraud without the participation of a bank employee, the appropriate body to take care of this matter would be the courts of general jurisdiction. It is important to mention that the Federal Court of Accounts - Brazil, recently updated its understanding and now considers that the individual agent that damages the public treasury is subject to accountability by TCU whether having acted with the help of a public official or alone. Nevertheless, the rapporteur himself of such innovative resolution[3], Minister Benjamin Zymler, made it clear in his vote that the possibility does not reach the credit transactions regularly made by official banks (italics in the original):

> *Also based on this understanding, there may be situations where the nature of the operation that damaged the treasury does not justify or recommend TCU's intervention. Take, for example, default on regularly held private loans by official banks - i.e. in accordance with the relevant regulations. First of all, because the number of such operations would require significant effort and control bodies, removing them from acting in more relevant situations. Second, because they are typically*

> *private transactions in accordance with the separate legal status of private companies that are subject to official financial institutions (article 173, section 1, item II of the Federal Constitution).*

Although TCU does not monitor the application of funds, it may determine additional measures aimed at protecting the public treasury in some of the credit lines of these banks. One example is the financing provided by BNDES for the construction sites of the 2014 World Cup in Brazil. The bank created a specific credit program called "ProCopa Arenas" to finance the construction and renovation of stadiums for the competition. The amount of contracted funds reached a sizable figure: 4.15 billion reals[4]. Only Brasilia's National stadium did not receive any funds from the federal government out of the twelve stadiums built/renewed for the World Cup. Not only due to the large sum involved, but also to preserve the "image of the country abroad, as well as any unintended consequences that may occur following the 2014 World Cup (e.g. increase in public debt due to mismanagement of public resources), "in Ruling 845/2011-TCU-Full Court the court established some conditions to be fulfilled by BNDES financing upon approval and release of funds: a) a thorough analysis of the budget of the works to identify any inaccuracy in costs involving both construction methods or execution time, b) no sum was released if there was any "evidence of irregularities according to federal oversight bodies. Such irregularities should be overcome in order for the funds to be released", and c) in order to release any installment that represented over 20% of the total amount of resources, there should be a previous approval of both FIFA and the TCU.

Besides these very exceptional situations, since this is about hosting a World Cup with stadiums almost entirely financed by the federal government, the rule for the loans granted by federal banks was, however, that the TCU limited its role to that of overseeing the regularity of the transactions with official banks, and the following assessment of a possible failure or misuse of such funds are outside its monitoring scope.

3. EXTERNAL CREDIT TRANSACTIONS APPROVED BY THE FEDERAL GOVERNMENT

States, the Federal District and municipalities may take out loans abroad. In order to do so, they should get permission from the Senate, as set forth in Article 52; paragraph V of the Federal Constitution. As the foreign institution usually requests collateral from the federal government, the Senate should also "provide for limits and conditions for the granting" of that security (article 52, section VIII of the Constitution).

The official act by which the Senate authorizes a member of the federation to take out external credit is then forwarded to the TCU to track any guarantees offered by the federal government. Such monitoring by the Court is not, however, the monitoring of the implementation of the funds received, but only a cautious measure to protect the federal government as guarantor of the transaction.

In the prevailing opinion of Resolution 2327/2013-TCU-Full Court, Minister Ana Arraes stated:

> [...] Regarding foreign credit operations signed by legal agencies of public bodies, I emphasize that TCU's competent jurisdiction is to control the guarantees offered by the federal government and its role does not include the monitoring of the implementation of the funds of such financial transactions.
>
> Once the financing transaction is over, the funds belong to the contractor for it is the contractor's obligation to repay such debt with its own funds. The monitoring of the application of the obtained funds lies with the corresponding court of accounts, highlighting the federalist principle (art. 18 of the Constitution).

Table 2
Resources obtained from official federal banks

Credit Borrower	Authority to oversee the implementation and assess any irregularity
Individual or private company	Courts of general jurisdiction, unless the irregularity is committed alongside with a bank employee, whenever the competent jurisdiction is of the Federal Court of Accounts
Agency within the Federal Government	Federal Court of Accounts of Brazil
State or Federal District	State or Federal District Court of Accounts
Municipality	State Court of Accounts. In Bahia, Ceará, Goiás and Pará the competent jurisdiction lies with the Municipalities Court of Accounts. In the cities of São Paulo and Rio de Janeiro, the competent jurisdiction lies with the corresponding Municipal Court Accounts

Should the federal agency that borrowed the money default the debt and the guarantor, the federal government, become responsible for paying such debt, the National Treasury is required to report such situation to the Federal Court of Accounts and the Senate within 10 days "stating the measures taken and those that will be taken in order to receive the money back"[5]. According to Article 18, section 4 of resolution 43/2001 of the Senate, "the State, the Federal District or the Municipality that had the federal government pay its debt [...] as a result of a guarantee provided for a foreign loan can not take out new credit loans until the full settlement of the aforesaid debt."

4. LOAN WITH FGTS FUNDS

According to the law governing the Guarantee Fund for Time of Service (FGTS), the fund's resources should be invested in housing, sanitation and urban infrastructure[6]. With regard to investments in sanitation and urban infrastructure, recipients are generally states and municipalities, although there are also lines of credit to the private sector, as the Sanitation for All Program, aimed at private sanitation concessionaires. The financial institution responsible for the collection and application of fund resources is the *Caixa Economica Federal* (CEF).

Although the FGTS consists of deposits raised to Brazilian workers - holders of the funds - the Federal Court of Accounts has understood that such resources are of a public nature. Minister Adhemar Paladini Ghisi stated in his prevailing opinion vote of Resolution 241/1993-TCU-Full Court of June 16, 1993 that:

> There are, however, among the resources that make up the FGTS and savings accounts - in this case, the ones held at CEF - differences to be considered. Both undoubtedly belong to individuals that hold individual accounts. However, there are huge differences in the withdrawing and destination of both. While the first, FGTS, is governed and disciplined by a series of rules issued by the State, as regards to the funds destination for housing and sanitation programs, as well as to the mere handling by the account holder. In the second, savings accounts, we have funds that can be very flexibly used, according to what best suits the account holder.
>
> Then we understand that the mere interest of the state to provide the FGTS grants it the condition of res publica (a public affair, in English), becoming then responsible for a more effective supervision.

New arguments were added to such understanding by Resolution 833/1997-TCU-Full Court of November 26, 1997. Minister Benedict Joseph Bugarin was the rapporteur:

> Nevertheless, there is evidence of the competent jurisdiction of the Federal Court of Accounts due to the fact that the CEF is the operating agent of the FGTS, pursuant to article 4 of Law No. 8.036/90, "the federal government may be responsible for its misuse" [...]. Consequently, despite the court precedents that disqualify the FGTS as a public revenue and therefore as tax revenues as well, its everyday use and even legislation (Law No. 8.844/94) have treated it as public fund.

Once the debate about the public nature of the deposits that make up the fund is over, TCU's monitoring of loans granted by *Caixa Economica Federal* with FGTS follows the same rule applied to other loans and financing granted by official banks: the Court evaluates only the regularity of the loan and ensures that resources reach their intended purpose and that the collateral offered by the borrower is sufficient.

Based on this understanding, TCU has repeatedly declared itself without competent jurisdiction to oversee the implementation of FGTS (Resolution 166/2000-TCU-Full Court and Resolutions 2768/2006-TCU-Second Chamber and 678/2010-TCU-Full Court, among others). Minister Marcos Vilaça presented insightful thoughts on the matter on the prevailing vote of Resolution 1007/2000-TCU-Full Court:

> I think its is not among the attributions granted by the Federal Constitution to the TCU, in its article 71, the monitoring of the application of funds transferred by the federal government to federal agencies through funding agreements. Once such funds have been transferred to State (or Municipal) Treasuries, in my opinion, they become property of those agencies and should be monitored by the State (or Municipal) Court of Auditors, according to our federal pact. Such funds

> lent to states through onerous contracts, should be returned in the contractually established form to the lender, and they are not to be mistaken with the "straight-grant" funds transferred by the federal government to States and Municipalities through "covenants, agreements, arrangements or other similar instruments" that assign TCU the monitoring responsibility according to clause of Article VI of the Constitution and section VII of article 5 of the TCU Regulations.
>
> When managing covenant funds, the State or the municipality is using federal funds in order to achieve goals that are also of the federal government, and is therefore subject to monitoring from both parties. Such funds are linked to the purpose for which they are intended, and shall be applied as established in the covenant, otherwise they shall be given back to the federal government, and are also subject to sanctions by the TCU.
>
> Whenever managing funds from loan or financing, the federal agency is ultimately managing its own resources whose future availability is anticipated, at the cost of the interest involved in the transaction. Therefore, it is up to the State or Municipal Court of Auditors to monitor the implementation of these funds.
>
> Admittedly project financing contracts often contain disciplinary clauses for the application of funds, entered by the lender as a way to ensure the fulfillment of the project and hence the return on the investment. In such cases, and the contract determines the monitoring of the implementation of the funds by the lender. This, however, does not grant competent jurisdiction for the TCU to monitor the implementation of such funds.

5. COMPETITIVE BIDDING

Article 113, section 1 of the Law 8.666/1993 (Competitive Bidding Law) authorizes "any bidder, contractor, or person or agency" to make a complaint to the TCU against irregularities in bids or contracts involving federal funds. As the Court has the precautionary power to halt competitive biddings, it eventually became the major recipient of complaints intended to challenge errors in competitive bidding processes or contracts by agencies and organs that involve the use of federal funds.

The certainty that the budget allocation is of federal nature used in the competitive bidding or contract does not, however, guarantee that TCU has the competitive jurisdiction over the reported error. The Court has been stating in a number of rulings that it is not of competent jurisdiction to examine complaints that do not privilege the public interest in recent years. The position of Minister Benjamin Zymler in the prevailing opinion of Resolution 789/2009-TCU-Full Court stated that:

> We recognize TCU's competent jurisdiction to receive complaints concerning companies hired by the federal government, due to irregularities in the implementation of the Statute of Competitive Bidding as set forth in article 113, section 1.
>
> However, there is no protecting private interests in this Court. Despite any previous resolutions, any ruling given by TCU that may eventually seem to benefit a company that has filed a complaint reporting possible contractual irregularities happens for the benefit of the public interest, since it remains the most important thing in the analysis of contracts between the Administration and private interests, for the most important aspect of the regulations of competitive bidding as set forth in article 113, section 1, of the Competitive Bidding Law, is to preserve and protect the public interest and not private ones.
>
> If public interest is not identified in the contractual relationship, the competent jurisdiction of the TCU must be excluded, for it is not the to not the appropriate forum to make such analysis.

Substitute-Minister Weder de Oliveira follows that same line of thought in his opinion of Ruling 8071/2010-TCU-First Chamber:

> The possibility of filing a complaint at this Court as set forth in article 113, section 1, of Law 8.666/1993 is broad and in principle can involve any and all administrative actions governed by the competitive bidding law, including the decommissioning of proposals.
>
> [...].
>
> However, one cannot forget that the competitive bidding process and the right to file a complaint do not seek the protection of individual interests when the public interest is not clear.
>
> [...].

> To bring the analysis of administrative acts in a competitive bidding process before the TCU, in which the public interest is not clear turns it into a new instance of appeal for bidding processes in the various agencies and organs of the Federal Public Administration, something that is clearly not in compliance with the Brazilian Laws.

The consolidation of such understanding has led to important changes in the regulations of the Court itself, introduced on January 1, 2012. Until then, Article 276 of the TCU's regulation authorized it to adopt precautionary measures "in case of emergency, a well-founded fear of serious harm to the treasury or the rights of others or the risk of ineffective decisions on the merits." In the new wording of the regulation, however, the same article went on to determine the adoption of the precautionary measure could no longer be founded on the fear of serious harm "to others' rights", but on well-founded fear of serious harm "to the public interest"[7].

Based both on consolidated court precedents as well as on the new wording of its regulation, the Court started excluding complaints whose purpose are not to protect the public interest, but private ones. Therefore, even in situations whenever there is a flagrant violation of the law or the biding invitation in a competitive bidding process that does not harm the public interest, TCU understands that the Judiciary must address such third-party complaints.

In Resolution 4056/2010-TCU-First Chamber, for example, the Court found irregularities in the biding invitation that restricted competition. Nevertheless, its rapporteur, Minister Walton Alencar Rodrigues, considered that the failure in question did not result in damage to the public interest because the event a reasonable number of bidders and there had been big discounts after the first bidding phase. Besides that, the administration had used electronic bidding methods, which "encourage competition and lower the probability of irregularities".

6. ADDITIONAL SITUATIONS OUT OF TCU'S SCOPE

There is a list of the additional situations below that are also out of TCU's scope of monitoring. They are exposed more briefly, clarifying the reasons for the matter to be out of TCU's scope of monitoring and with excerpts of the resolutions that settled them.

i. Use of initial credit for those who benefited from the Land Reform Program

Why is it not TCU's competent jurisdiction?

Although granted by the federal government through the National Institute of Colonization and Agrarian Reform (INCRA), the initial credit becomes of a private nature at the moment that the beneficiary receives it. TCU's task is only to monitor the regularity of the grant operation and the actions taken by Incra for credit recovery.

Court precedents

Resolution2001/2010-TCU-Full Court, reported by substitute-Minister Weder de Oliveira:

> Once the credits are granted, they are no longer public funds, but they now belong to the program beneficiaries. In the public sphere the record of the receivable from each of the borrowers remains, but not of the funds themselves.
>
> [...]. The program beneficiaries should be the most interested in ensuring the proper application of their own resources, and that in due time, the funds shall be restored to the treasury under the conditions specified in the financing [...].
>
> The misapplication or misuse of these resources will harm the beneficiaries, and not the public treasury directly. Possible harm to the treasury will occur in the event of default in payment of installments of the loan agreement [...]. The correct management of the grantor, however, shall mitigate the risk of default and will increase the credit quality and the results the government intends to achieve with it.

ii. Management of federal ports and highways granted to states and municipalities

Why is it not TCU's competent jurisdiction?

After the delegation agreement signed in accordance with the law 9.277/1996, management acts - those that do not involve the use of funds of the federal government - undertaken by state or municipal authority in charge of the federal port or highway shall be monitored by the corresponding State or Municipal Court of Accounts.

Court precedents

Summary of Resolution 1168/2013-TCU-Full Court, reported by Minister Ana Arraes:

> REQUEST OF AUDIT SENT BY THE PRESIDENT OF THE COMMITTEE ON FINANCIAL SUPERVISION AND CONTROL OF HOUSE OF REPRESENTATIVES. POSSIBLE IRREGULARITIES IN THE MANAGEMENT OF THE *Paranaguá* and *Antonina* (APPA) PORTS. COMPLAINT WAS DENIED. LACK OF COMPETENT JURISDICTION OF THE COURT. FORWARD THE INFORMATION. DISMISS THE REQUEST.
>
> It is up to the State Court of Accounts to oversee the management actions practiced by state and local authorities that have been granted federal public goods that do not involve the use of funds of the federal government.

iii. Funding of the National Program for Strengthening Family Agriculture (Pronaf)

Why is it not TCU's competent jurisdiction?

Although granted by the federal government through the Department of Family Agriculture (SAF) of the Ministry of Agrarian Development and with the aid of federal banks as agents, the Pronaf funding becomes of a private nature once it is given to the farmer. The competent jurisdiction of the TCU is to oversee if the SAF and the Central Bank adopted measures set forth in the regulations of the program (SAF Ordinance 12/2010, MDA Ordinance 17/2010 and the Rural Credit Guideline).

Court Precedents

Resolution 1942/2013-TCU-Full Court, reported by Minister Ana Arraes:

> First, it is important to clarify that it is essential to know the nature of the funding granted under the agrarian reform programs to assess whether they are under the competent jurisdiction of the TCU. When they refer to the relationship formed between an individual and a financial institution, there is no longer competent jurisdiction of the Federal Court of Accounts.
>
> The program of transfer of funds here, Pronaf A, is a line of investment structuring properties of settlers. In this sense, in principle, the withdrawal of the settlement does not harm the treasury, because there is no evidence that the resources for investment in the property have not been used for this purpose. As a rule, loans to dropouts or excluded beneficiaries are paid off or assumed by new beneficiaries, since the expenditure is made on the property.

iv. Issuing an opinion for the beginning of an investigation or administrative proceeding of another institution

Why is it not TCU's competent jurisdiction?

To issue an opinion on documents filed by federal prosecutors, the Federal Police or other institutions for instructional purposes of investigation or administrative procedure is not a part of the constitutional or legal powers granted to the Federal Court of Accounts

Court Precedents

Resolution 356/2010-TCU-Full Court, reported by Minister substitute Weder de Oliveira:

> I emphasize, however, that is not one of the functions, powers and duties of the Federal Court of Accounts, as established in the Constitution, in its organic law, in its internal regulations and other laws, to express opinions on documents referred by other institutions for the purposes of beginning administrative investigation procedures.
>
> Thus, despite being relevant, the requests for support of this external control agency are not met in the way requested.
>
> The Federal Court of Accounts can participate in joint actions for the investigation of offenses practiced against the public administration, either through external control of its own processes, or to support actions undertaken by other State agencies.

7. CONCLUSION

Judges, federal prosecutors, Federal Police agents and even the Congressmen/women forward certain requests to the Federal Court of Accounts believing that, since they contain administrative matters or address the use of federal funds, they are in compliance with the mandatory powers granted to the TCU by the Federal Constitution. Complaints and irregularity claims from individuals and companies involve the same mistake. Many of these demands, however, are outside of the competent jurisdiction of TCU.

In the matters regarding the limits of the Federal Court of Accounts that are still not very certain, its ministers have sought to mark them off through court precedents in which the court repels matters outside its external control monitoring powers. Knowing and

respecting such limits is essential not only for the legal certainty of TCU's own decisions, but also to situate it properly and enhance its role within the current control structure of the government - a structure that holds TCU alongside great institutions such as the Office of the Federal Comptroller General, federal prosecutors and the legislative and judicial branches.

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NOTES

1 ADMINISTRATIVE LAW. DISCRETIONARY POWER. CHOICE OF CLERKS FOR THE PRESIDENT OF THE COURT. PER DIEM AND TRAVEL EXPENSES. The Presidents of the courts have, within the margin of discretion afforded to them, the power to decide on the timing and convenience in choosing servers to perform extraordinary tasks related to the administration's interest, due to the fact that they have a significant role in the administrative structure of the judiciary. Security granted. (WRIT OF MANDAMUS 23981. Rapporteur: Ellen Gracie. Full Court. Judged on February 19, 2004, Published on March 26, 2004).

2 Article 16, section 2, paragraphs "a" and "b" of the Law 8.443/1992.

3 Resolution 946/2013-TCU-Full Court, reported at the annual meeting of April 17, 2013 by Minister Benjamin Zymler.

4 According to figures in the table included in Resolution 2225/2013-TCU-Full Court, a total of 400 million reals were granted to Itaquera Arena through a financing that had the CEF as the intermediary.

5 Article 4, item I of normative instruction 59/2009 of the TCU.

6 Article 9, section 2 of the Law 8.036/1990.

7 Original wording of article 276: "The Full Court, the rapporteur, or, in the case of article 28, item XVI, the President may, in case of urgency based on the fear of serious harm to the treasury or to the rights of others or the risk of ineffective decision on the merits, *ex officio* or upon request, adopt a precautionary measure, with or without the hearing the parties involved, in order to determine, among other measures, the suspension of the contested act or procedure until the Court decides on the merits of the question raised, pursuant to article 45 of Law No. 8443, 1992". New wording in force since 2012: "The Full Court, the rapporteur, or, in the case of article 28, item XVI, the President may, in case of urgency, based on the fear of serious harm to the treasury, the public interest, or risk of ineffective decision on the merits, *ex officio* or upon request, adopt a precautionary measure, with or without the hearing the parties involved, in order to determine, among other measures, the suspension of the contested act or procedure until the Court decides on the merits of the question raised, pursuant to article 45 of Law No. 8443, 1992". contested act or procedure until the Court decides on the merits of the question raised, pursuant to article 45 of Law No. 8443, 1992".

Credibility of Governments, Role of SAIs and International Good Practices on Financial Audit

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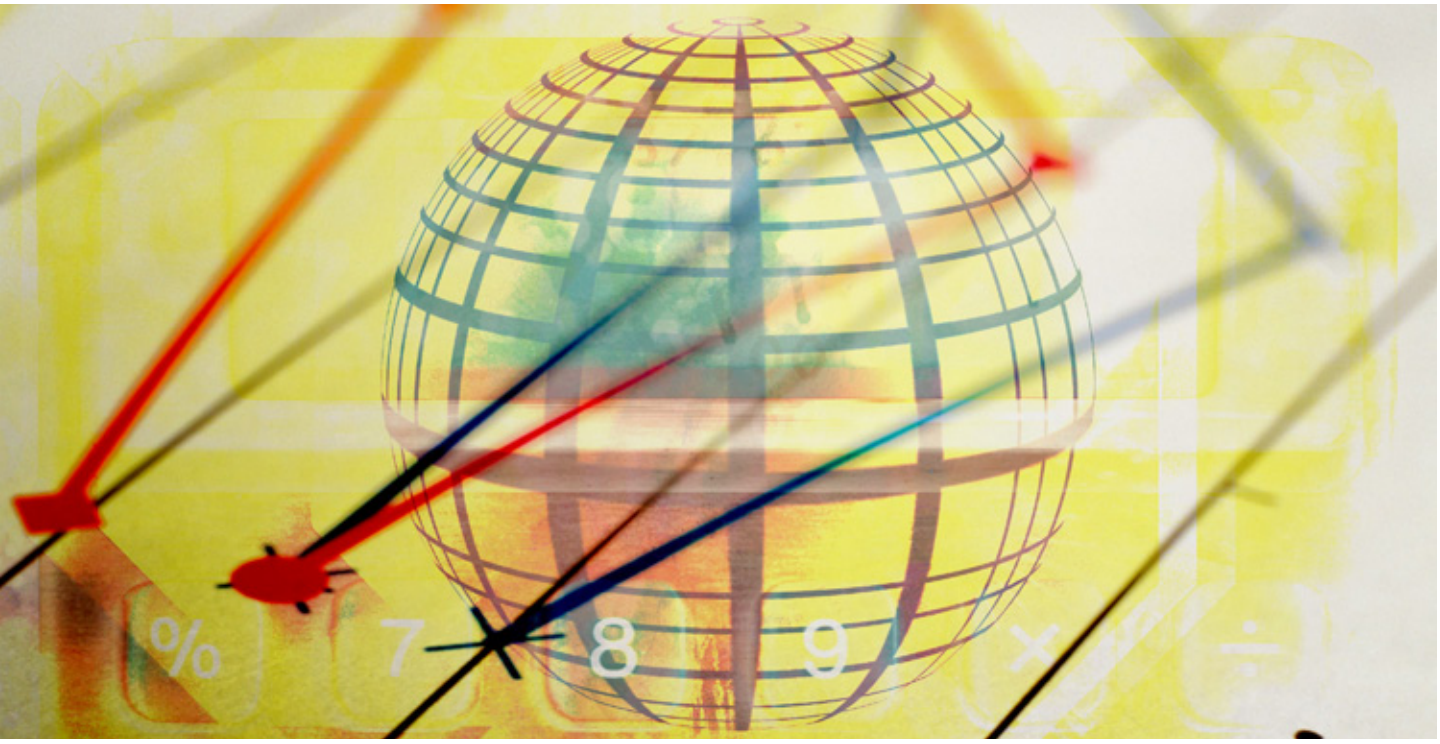
SUMMARY

The Federal Court of Accounts – Brazil (TCU) has the mission of overseeing public administration improving it in the benefit of society. Therefore, the challenges faced by TCU vary as public management economic, political and administrative scenarios evolve. In the present state of fiscal and global crises, TCU has an important institutional role, which is to build trust in society. In line with the strategic vision of being known as an institution of excellence in oversight and that contributes to the improvement of public administration, the Court attempts to converge its financial audit practices to the international standards and good practices. This paper presents some of the results of this convergence process, particularly the findings obtained through a survey on good practices in Supreme Audit Institutions (SAIs) of developed countries. The survey is structured in four main dimensions: i) mandate and objectives; ii) resources and organization; iii) methods and procedures; and, iv) reports and impacts. The main conclusions were: i) financial audit is part of the mandate of all the SAIs surveyed; ii) there are structures and specialized professionals for this audit tool; iii) there is great concern in ensuring that international standards are being applied, by means of IT solutions that are leaders in the market and by the SAIs submitting themselves to periodic



peer reviews; and iv) the main benefits of this type of audit are the strengthening of accountability, transparency, integrity, internal controls and public sector governance.

Keywords Credibility. Financial audit. Good practices. SAI. Trust.

1. INTRODUCTION

The current national and international scenario has shown the importance of the word trust in the relationship between government and society. According to Easton (1965), trust in governments represents citizens' trust in the actions of a government taken to do what is right and fair. In a democracy, this relationship is contractually agreed upon through the voting system, which symbolizes not only the choice of political representatives but also an event that is well defined in time and space. Each citizen hopes that their candidates, if elected, will make sound decisions reagaring the paths to be followed by the country as a whole and, directly or indirectly, by each of its inhabitants.

The role of government in steering society has increased with the consolidation of social rights and the need to preserve macroeconomic stability. For this reason, issues such as tax burden, social spending, social security, public debt and assets concern not only experts, but the entire community affected by the quality of public finance management.

Given the social and economic risks arising from the loss of credibility of governments, Supreme Audit Institutions (SAIs), which is the generic name given to foreign agencies similar to the Federal Court of Accounts (TCU), have been increasingly concerned with conducting audits designed to make the population, as well as representatives elected to legislative houses, feel secure.

After the global economic and financial crisis, the governments of the most affected countries took several measures as a response. In Europe, the fiscal austerity policies prevailed. In the United States, attention should be drawned to the acquisition of banks in critical financial situations, through the TARP (Trouble Asset Relief Program) program. Such measures have diferente objectives: to restablish the health of public accounts and recover the financial system. However, both are related to the same strategy: bring stability to the economy.

This scenario created new expectations on the part of society regarding the SAIs, resulting in new institutional challenges. Nagy (2012) mentions the taxonomy of the Finland SAI as to the stages of crisis management to identify the role of the SAI (CRAFF - Crisis-Related Auditing Functions and Features): i) preparedness; ii) immediate response; iii) management of crisis; iv) exit strategies; e, v) new

order. Among the functions of an SAI, financial audit plays an important role both in the initial stage of preparedness as in the stages of management and recovery from the crisis.

According to the internataional standards (ISSAI 200), financial audit has the purpose of increasing the level of trust of users of financial information of governments. To that end, the SAIs must be sure that the accounts of the governments are trustworthy and present an accurate picture of the reality of the situation and of their financial performance. Thus, financial audit is a fundamental tool for the SAI in measuring credibility of government finances.

In a study requested by the European Commission, it was found that the majority of the public bodies in Europe submit themselves to anual financial audits and that there is a high level of homogeneity regarding the characteristics of this type of audit in the region due to the adoption of international standards (ERNST & YOUNG, 2012).

Aware of this institutional, political, economic and social role of SAIs, TCU signed a grant agreement with the World Bank in 2011 with the aim of strengthening the financial audits of government accounts, more known as audits of the General Cash Balances of the Union (*Balanços Gerais da União* - BGU). This agreement intends to bring TCU practices regarding its financial audit function to the level of international standards and best practices. In view of this, this paper has the purpose of disseminating part of this project.

2. METHODOLOGY

The main method used to collect data on International good practices was a questionnaire sent to SAIs of developed countries.

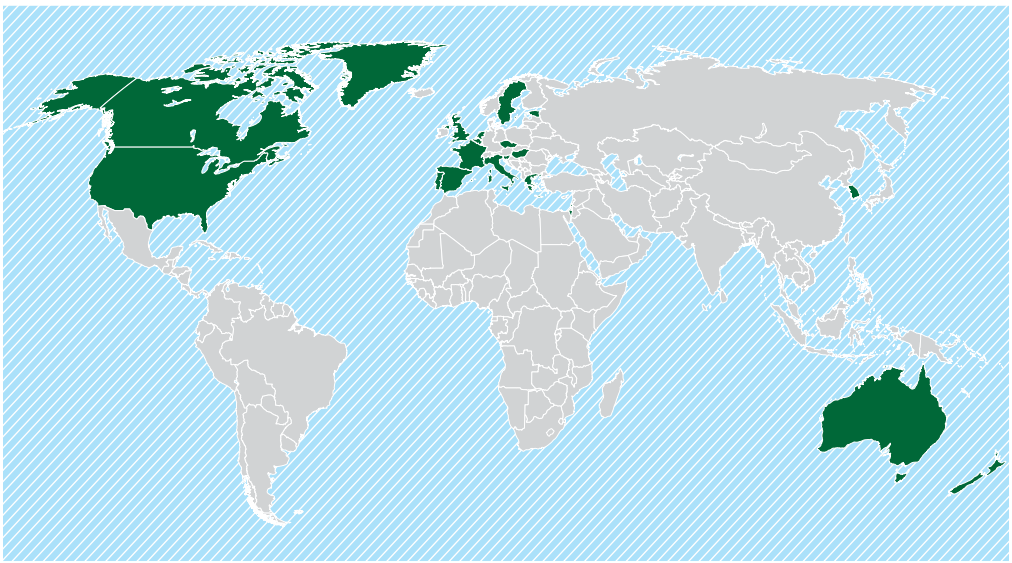
Several comparative studies identify that in developed markets financial audit is more traditional and disseminated in the culture of those nations (SAUDAGARAN E DIGA, 1997; NOBES, 1998; ELLIOT E ELLIOT, 2002; e, NIYAMA, 2005). The main characteristics that differentiate these countries are the nature of the legal system (code law or common law), the source of funding the level of influence of legislation on accounting, professional education, the theoretical framework, and the strength of the profession.

The questionnaire was sent to SAIs of countries with a high *per capita* income and a high Human Development Index (HDI), under the premise that such SAIs, in some measure, have an influence on the high level of social and economic development. Twenty-one SAIs answered the questionnaire. The Figure 1 shows the geographic origin of the institutions that took part in the survey.

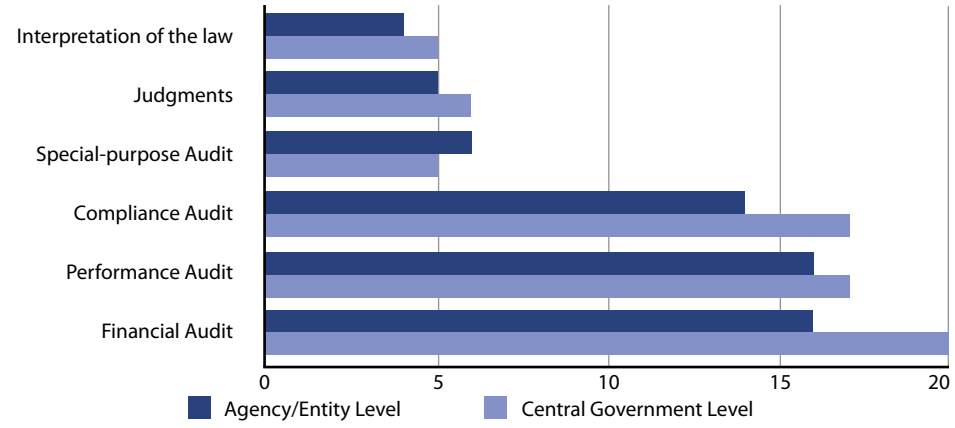
Among the respondents, there are nine Courts of Audit (Belgium, Slovenia, Spain, France, Greece, Italy, the Netherlands, Portugal and European Union) and twelve General Audit Offices (Australia, Canada, Korea, United States, Estonia, Hungary, Israel, New Zealand, Czech Republic, Sweden, Switzerland and United Kingdom).

The survey covered four important aspects: a) mandate and objectives; b) resources and

Figure 1:
Geographic origin of SAIs that participated in survey



Graphic 1:
Mandates of the surveyed SAIs



organization; c) methods and procedures; and d) reports and impacts. These demensions cover all the elements of the managerial cycles that are usually observed in public sector reforms, including: socio-economic demand, inputs, resources, processes, outputs, results, and impacts (POLLITT e BOUCKAERT, 2004). These are also the elements analyzed in performance audits, aiming at assessing efficiency, efficacy and effectiveness of the audited objects (TCU, 2010). This methodology is also applicable in SAI diagnostics. Proof of this is that it is aligned with the SAI performance measurement framework, known as SAI PMF.

3. MANDATE OF SAIS: SOCIETY'S EXPECTATION?

The mandate of a SAI is usually provided for in a constitution or in the law. It is sort of a contract between the constituent/legislator and the SAI. The different mandates of SAIs are intended to materialize yearnings of society and even of the market in relation to external control of public administration.

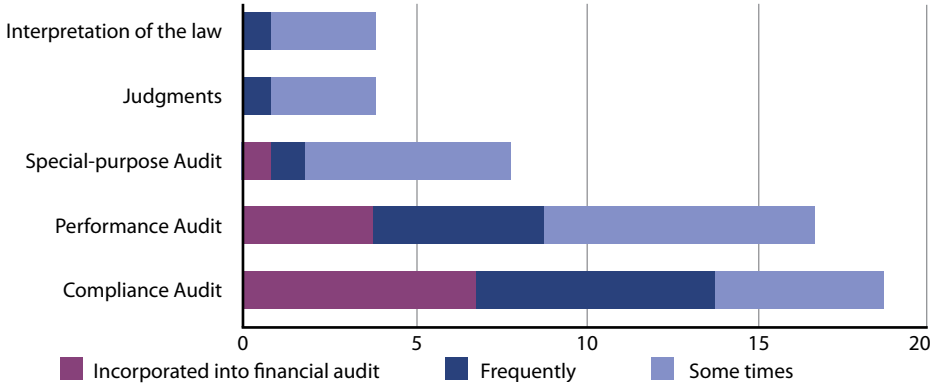
The results of the survey confirm what the International Organization of SAIs (INTOSAI), academic doctrine and international publications had already established, i.e. the most common control mechanisms are represented in the three main types of government auditing: financial, operational and compliance auditing.

In some models, especially in countries with a Court of Accounts, mandates for judging accounts, conduting special-purpose audits and interpreting law were also observed.

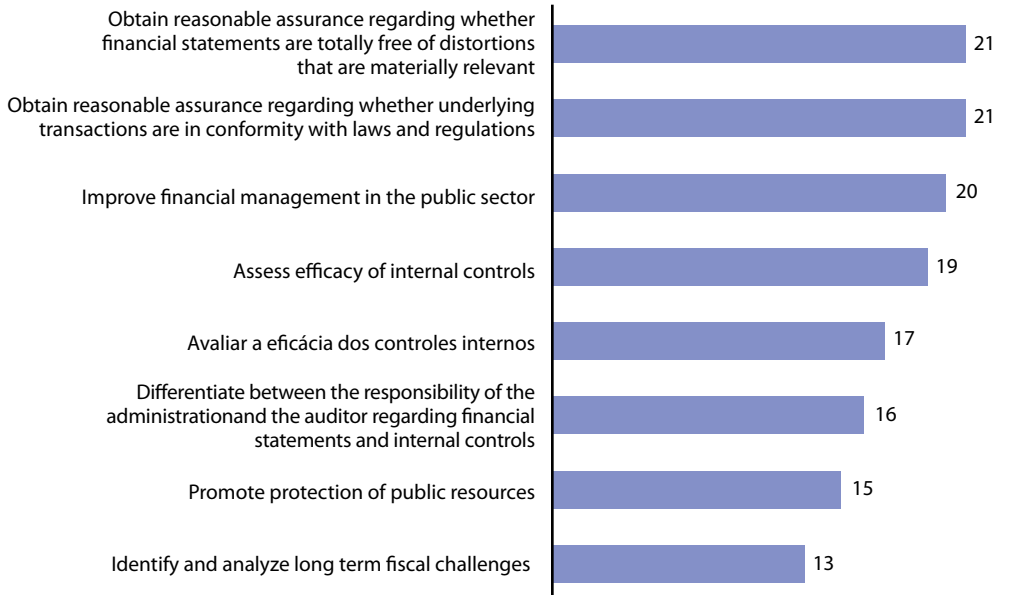
All the SAIs indicated that they have a mandate to conduct financial audit. Only one of them does not carry out this kind of audit at central government level, but performs this function at the level of agency and entity. The survey debunks the conventional notion that financial auditing is a typical function of the General Audit Office model and also shows that this function is the most recurrent one among the SAIs included in the sample.

However, the results indicate that there is no absolute segregation between external control tools. Financial audit is highly integrated into compliance audit in attestation engagements, in line with the

Graphic 2:
Level of integration between Financial Audit and other mandates of SAIs



Graphic 3:
Financial audit objectives according to the surveyed SAIs



fundamental Principles of Government Audit (ISSAI 100, 30). In addition, a signivicant level of interaction between the "fianancial" and "performance" audit types was found. Special-purpose audits, judgments, and interpretation of the law are also impacted by financial auditing, although less frequently.

There is no doubt about the importance given to financial audit by the surveyed SAIs. However, what does this audit tool mean to them? What would be its purpose in the legal and institutional framework of their countries? One of the questions included in the survey questionnaire addressed this issue and many conclusions can be drawn from it.

The first conclusion is that the primary function of financial audit in all the SAIs is to ensure the quality of financial information disclosed by government entities, in line with what is set forth in INTOSAI's international standards (ISSAI 200). But all the SAIs also highlighted that this type of audit is also intended to check legal compliance of financial transactions during the accounting year that the financial statements refer to. This confirms that financial audit is an appropriate tool for certifying the level of reliability and regularity of public accounts.

4. RESOURCES AND ORGANIZATION: BETTER STRATEGIES FOR INSTITUTIONAL EFFICIENCY AND PRODUCTIVITY?

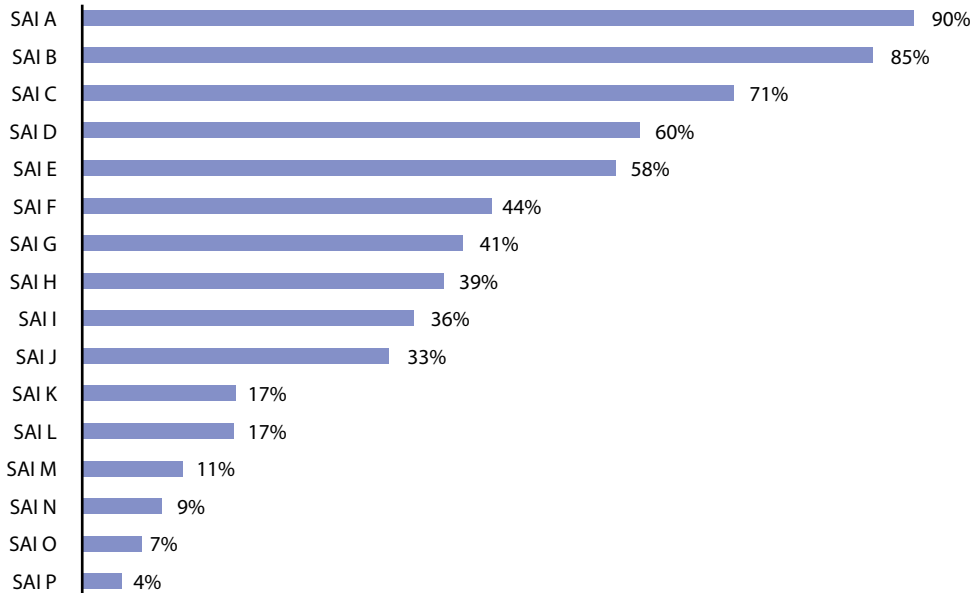
The questionnaire also addresses managerial aspects of financial audit, in particular choices in terms of organizational structure and of the profiles and skills of the professionals working in this area of inspection.

The questions about the "mandate and objectives" dimension provide an insight into what SAIs do, but they don't reveal the intensity with which they fulfill each of their institutional competences. One of the questions included in the questionnaire was precisely meant to identify the share of resources allocated to financial audit in relation to the total of the SAI auditors.

On average, 16 SAIs that answered this question allocate approximately 40% of their inspecting staff to this type of audit. This percentage changes significantly among the countries included in the sample. Without identifying the SAIs, it can be seen in the Graphic 4 that while at one extreme only 4% of all human resources are allocated to audits of financial statements, at the other this indicator rises to 90% for another SAI. Among the SAIs that adopt the Audit Court model, the average drops to 25%, probably due to the fact that they have other mandates, as already mentioned in the previous section.

In some countries, the option was made to outsource part of the financial audit function, i.e. instead of the SAI conducting this type of audit, independent audit firms from the private sector are hired to perform this task. However, this is an exception. On average, only 12.6% of the financial auditors have no formal employment ties with the SAI. Seven SAIs reported that they only outsource a small portion of their activities and three others reported that they rely quite heavily on independent audit firms. The remaining eleven do not resort to this alternative.

Graphic 4:
Percentage of financial auditors in relation to all the auditors of the surveyed SAIs



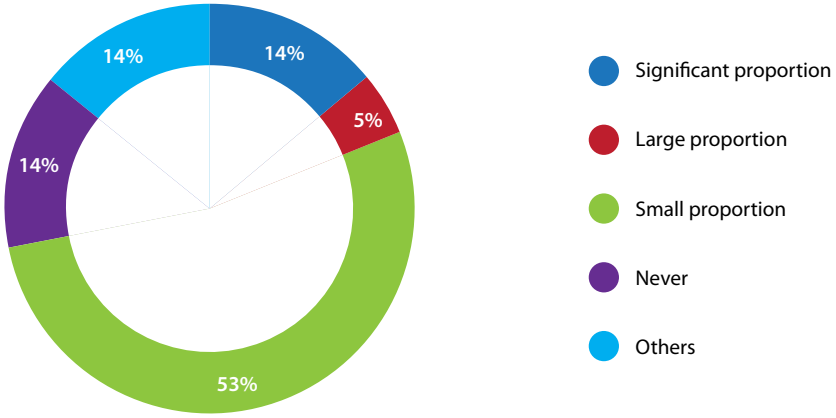
As for the professional qualification of financial auditors, 16 SAIs provided information on this topic. On average, half of their financial auditors have professional certification in accounting and auditing, meaning that they are more technically qualified for their job. This percentage varies greatly from one country to another. In countries with a longer tradition in financial audit, this percentage is higher.

A large discrepancy in the use of internal audit was also observed. Over two-thirds of the surveyed SAIs reported that they use internal audit. However, the intensity of its use varies. As a matter of fact, only four of them use it more intensively. The remaining eleven don't use it very much, as shown in Graphic 5. In the comments provided in connection with the question, some SAIs reported that using internal audit may be important to reduce the amount of financial audit tests. However, as a rule, they warn on the risks of using them and also point out that only in a few cases it is possible to have full confidence in these activities as audit evidence. In short, such use should vary according to the level of confidence of the SAI auditors in the internal audit of each agency or entity.

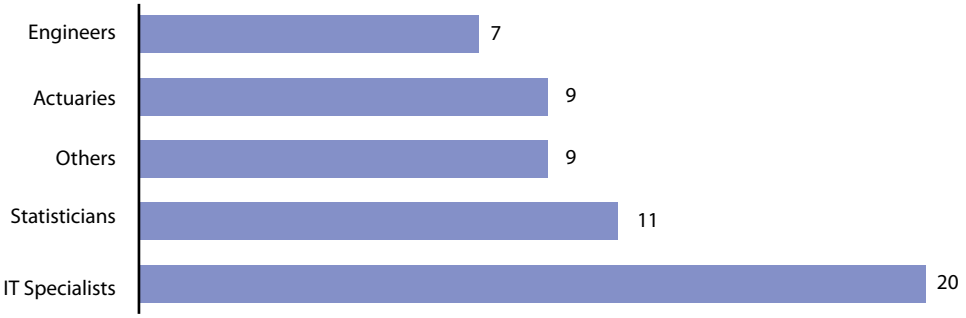
The survey also showed that experts are widely used to support the financial auditors, which is a proposal contained in the INTOSAI standards (ISSAI 1620). Almost all the SAIs rely on the services of IT experts. They also mentioned statisticians, actuaries, engineers, economists and lawyers.

Financial auditors are distributed in the organizational structure of each of the SAIs in different ways. A third of them opted for centralizing the financial audit function in a specific department. Approximately one quarter of them adopted matrix structures, with smaller financial audit organizational units spread in various departments. About a fifth of them adopt a combination of a centralized department with other decentralized units.

Graphic 5:
Use of internal audit work in the surveyed SAIs



Graphic 6:
Experts more frequently used in the financial audits of the surveyed SAIs



Other structures were mentioned. One of the SAIs mentioned that any department can perform all types of audits, so that almost all audit reports cover all types of audits. The structure of another one is grouped by geographic regions, where each group performs a financial audit function.

It was seen that, as a rule, financial audit has an organizational identity in both a matrix structure and in a centralized structure. This favors the specialization of auditors and supervisors in the methodology prescribed according to INTOSAI's international standards.

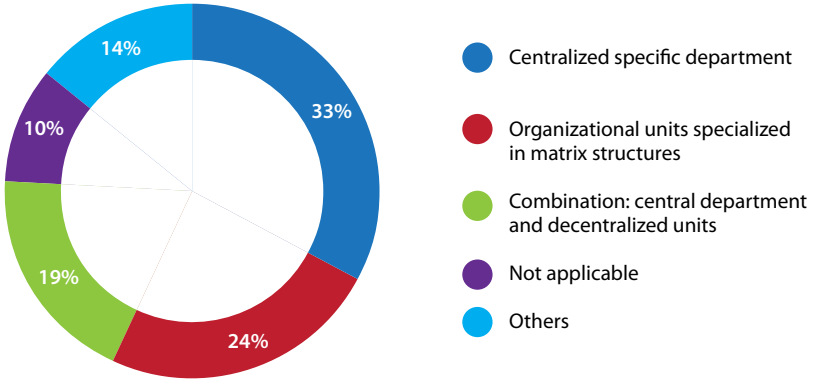
5. METHODS AND PROCEDURES: TOOLS TO APPLY INTERNATIONAL STANDARDS?

The best financial audit practices in terms of methods and procedures are related to some fundamental principles, with a focus on: credibility, quality, professionalism, efficiency, risk, relevance and materiality.

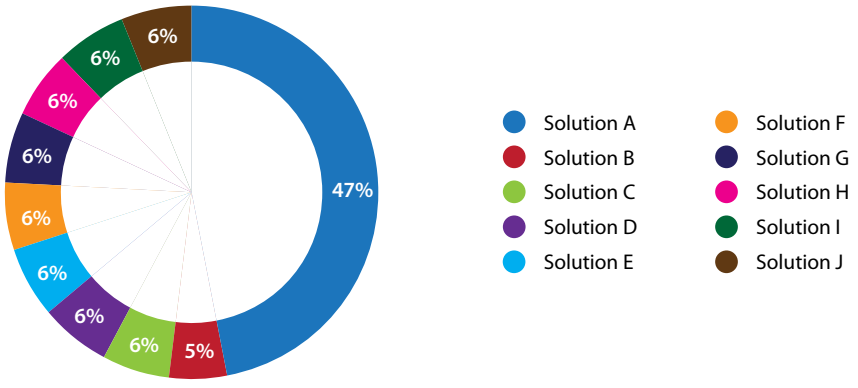
In this spirit, the survey confirms the importance of using leading-edge IT solutions, statistical sampling, minimum levels of materiality for analysis of relevance and also peer reviews. These methods and procedures enhance the efficiency and reliability of financial audits, generating greater value added for society.

Regarding IT solutions for financial audit documentation, a slight prevalence of a specific software was observed among the surveyed SAIs. Without identifying the solutions that were presented, Graphic 8 demonstrates this prevalence. Almost half of the surveyed SAIs use the same IT solution, indicating the importance of methodological standardization in this kind of inspection.

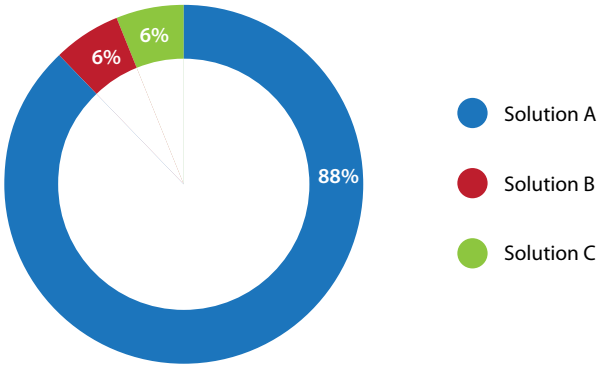
Graphic 7:
Financial audit in the organizational structure of SAIs



Graphic 8:
IT solutions for financial audit documentation in the surveyed SAIs



Graphic 9:
IT solutions for statistical sampling used by the surveyed SAIs



As for IT solutions for statistical sampling, this concentration is even higher. Almost all the SAIs that answered this question use the same software. Possibly, all the solutions provided are appropriate. However, the high level of concentration found in this survey indicates a good level of usability of the technological tool.

Still with respect to statistical sampling, the survey allowed for an observation of the level of use of this technique in financial auditing, for both testing internal controls and for substantive testing of accounting records and their underlying documents and transactions. Graphic 10 illustrates the results.

Statistical sampling is essential for account certification, since one must form opinions on the set of acts and facts of management and not only on actually tested items. It is necessary to extrapolate conclusions to all of the items of the set that the sample refers to. The survey confirms this logic, but it highlights the differences between tests of control and tests of detail, in line with ISSAI 1530, that deals with audit sampling.

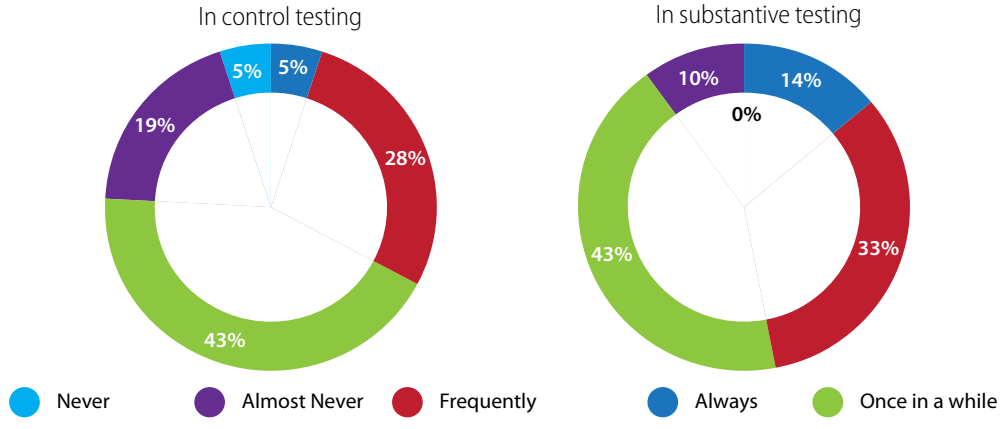
In the risk-based audit approach, knowing, evaluating and testing internal controls is critical for an auditor to develop a conviction, issue an opinion and certify quality for numbers and the regularity of management as a whole. The survey also allows for identifying the importance of audit evidence obtained by evaluating internal controls. In Graphic 11, one can analyze the level of use of evidence derived from substantive procedures and evaluation of controls.

In addition to these sources of evidence, many SAIs also indicated that they rely on the work of other auditors, whether they are internal or outsourced independent auditors, in line with the international standards (ISSAIs 1600 and 1610). This posture, coupled with evaluations of internal controls, shows that, given the complexity and comprehensiveness of government agencies, it is not possible to concentrate all the responsibility for management control in a single institution. More and more, the need for integrated, cohesive and efficient public management control systems becomes clear.

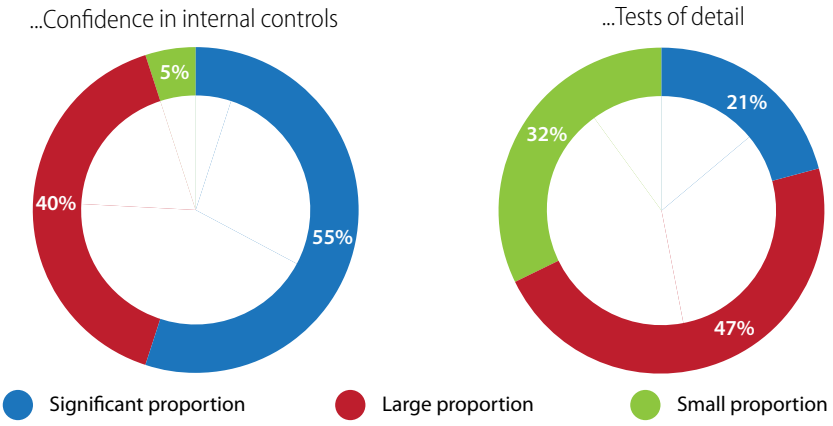
As a last observation about this dimension of the survey, peer review is another key factor to ensure that financial audit procedures and techniques are being adopted in tune with international standards and best practices. In the survey SAIs were asked how often they subject their financial audit function to external quality reviews by peers.

Most of the 19 SAIs that answered this question submit themselves to periodic external quality reviews. The periodicity of such reviews varies. Three of them reported that they go through annual reviews; two of them, at three-year intervals. Four others go through peer review every four years or more. One of SAIs

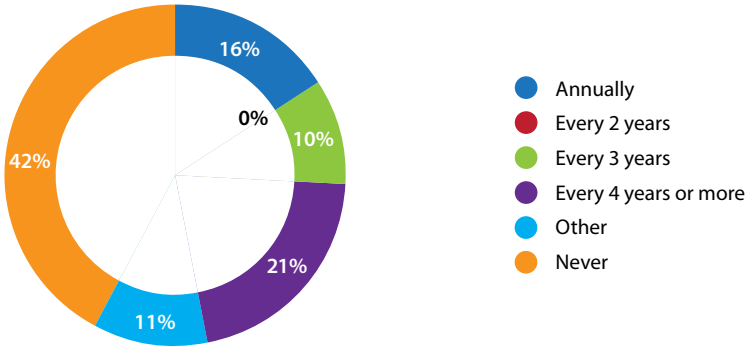
Graphic 10:
Level of use of statistical sampling



Graphic 11:
Proportion of evidence obtained from...



Graphic 12:
Periodicity of peer reviews of the financial audit function



that answered "other" periodicity remarked that it had a peer review for the first time in 2013. In short, one observes that the use of peer reviews is a trend, even as a way of following INTOSAI guidance (2007).

6. REPORTS AND IMPACTS: HOW TO COMMUNICATE RESULTS?

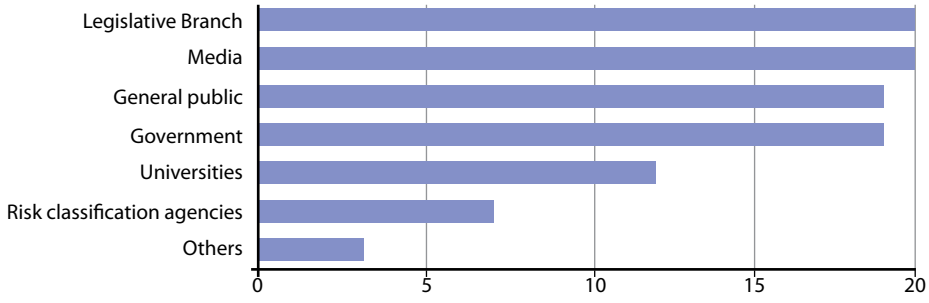
The first step in assessing the impact of an activity is identifying its objective and target audience. The objectives of a financial audit have been already identified at the beginning of this paper. The main users of audit opinions on financial statements will now be presented according to the surveyed SAIs.

The legislature, the media, the general public (citizens, taxpayers and users of public services) and the government are the main users. For users who are external to government, a clear and objective opinion is what is most important: is it possible to trust the government or not? For government, in turn, financial audits lead to several recommendations for strengthening internal controls, thus allowing for the risk of errors in government figures to be reduced.

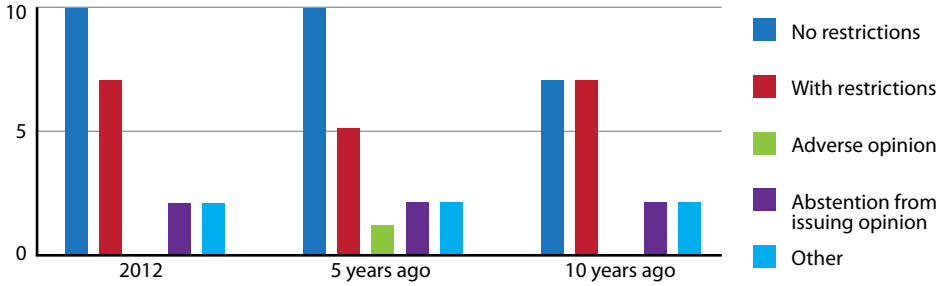
The SAIs were also asked about audit opinions on the consolidated accounts of their respective governments in three distinct moments: the year before (2012, since the survey was carried out in 2013), five years before and ten years before.

Some pieces of information can be drawn from Graphic 14. One of them is related to the prevalence of opinions without reservations, revealing the high quality of the financial reporting of the governments referred to

Graphic 13:
Main users of financial audit reports in the surveyed SAIs



Graphic 14:
Audit opinions on consolidated financial statements of the governments of the surveyed countries



by the SAIs that marked this option in the questionnaire. Another one refers to the increase in opinions without reservations. The disappearance in 2012 of the adverse opinion indicated by a SAI five years before is also worthy of mention. Finally, special mention should also be made of the use of the so-called "disclaimer of opinion" by two of the surveyed SAIs, indicating their inability to obtain sufficient and appropriate evidence to form an opinion.

The SAIs were also asked about the main errors that lead them not to issue an opinion without reservations. The following issues were mentioned:

- incomplete reporting of actuarial liabilities of public servants and contingent liabilities arising from lawsuits;
- insufficient quality of inventories and assessments of military and real estate assets;
- flaws in accounting records related to investments;
- inconsistent evaluations of highways;
- errors in the consolidation of transactions between government agencies; and
- weaknesses in internal controls related to IT, management of non-financial assets, people management, among others.

From the perspective of the impacts of financial audits, two questions are insightful and are intrinsically related. One of them is related to the risks of not having a strong financial audit function in a SAI. The other one refers to the benefits observed by SAIs in conducting audits of financial statements.

The question on risks was open, to be filled out freely. Nevertheless, some of the highlighted risks were recurrent amont the SAIs. The main risks they indicated are the following ones:

- weak public governance;
- increased risk of fraud and corruption;
- materially relevant errors in financial statements;
- flaws in transparency and accountability on the use of public funds;
- noncompliance with laws and regulations;
- low confidence in the accuracy of information provided in financial statements;
- negative impact on the reputation and credibility of SAIs, as well as on their capacity to fulfill their mandates;
- increased risk of weak internal controls;
- increased risk of Parliament not being well informed about the financial management of government agencies; and
- increased risk of not identifying other areas that should be the object of an operational audit or a special-purpose audit.

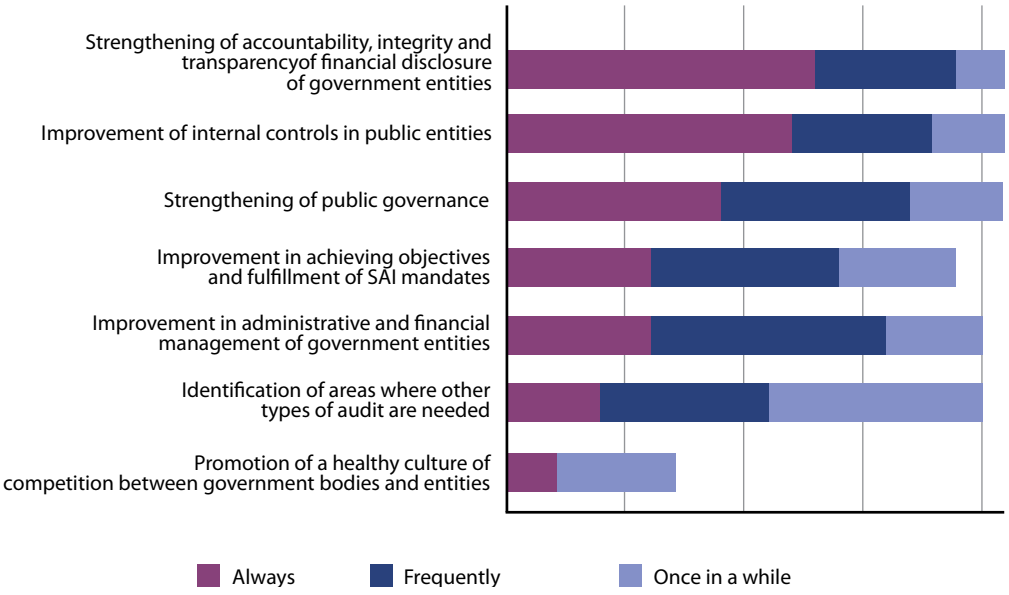
Therefore, the risks that were pointed out range from institutional and managerial risks to economic and social risks. The other side can be observed in the benefits of conducting financial audits, according to the surveyed SAIs. Graphic 15 summarizes the benefits that are obtained to some extent.

The benefits corroborate what was highlighted as risks derived from the lack of a strong financial audit function in a SAI. Strengthening of accountability, integrity, transparency, governance, internal controls and financial management in the public sector creates a positive political and administrative environment for implementing public policies and for foreign investment in the country (IIA, 2012).

7. CONCLUSION

After analyzing this huge amount of information, one can better understand what financial audit in the public sector is and what it is intended for. In the introduction of this paper, the importance of the word trust was mentioned. The greater the confidence, the lower the asymmetry in information and the less conflicts of interests will occur.

Graphic 15:
Key benefits of the financial audit function of the surveyed SAIs



To conclude this text, the value of the word certainty, which can be seen as the other side of the coin, must be highlighted. When one is certain about something, his or her predisposition to trust will be greater. In this regard, the role of SAIs is to make stakeholders in government certain of the level of commitment to comply with legal provisions and with contracts and agreements in a transparent and efficient manner. The greater the trust, the lower the cost of mistrust on the part of third parties in relation to governments, i.e. members of parliament, suppliers, investors, citizens, taxpayers or users of public services. Maintenance of credibility by promoting public trust can improve competitiveness and productivity and lead to innovation in the public sector as well as in the private sector (NAGY et al, 2012).

A good example of the effect of lack of confidence can be observed in the Brazilian budgetary process. Excessive detailing of budgets reflects the need of the Legislative Branch to oversee closely what the Executive Branch is executing. TCU has a key role to play in reducing this mistrust between the two branches. Another example can be seen in recent downgrades of debt risks of soverign debt and of several banks and extensive use of investments in government securities.

There should be no doubts about the reliability of figures that have a direct influence on the Brazilian political, economic and social systems. Some examples are: i) amount of revenues that are to be shared with states and municipalities; ii) indicators used to monitor tax limits and minimum amounts to be allocated to the education and health care sectors; iii) social security and actuarial deficits; iv) debt stock and interest expenses; v) tax, social security, and property revenues; and vi) depreciation of public assets.

Accordingly, independent, annual and comprehensive certification of the accounts rendered regarding allocation of public resources is essential to ensure credibility to governments and security to society (IFAC, 2013). To this end, financial audit is a tool at the same time traditional – due to its disseminated use all over the world for several decades – and modern – because of the new approaches based on risk and on timely correction of flaws.

It is worth noting that financial audit is not a remedy for all problems regarding financial health of governments. If we compare the auditor to a doctor, financial audit would be the equivalente to some cases in family medicine in which routine appointments are very important in order to avoid bigger problems in the future. That said, this type of audit completes the portfolio of audit tools of the SAIs and have a preventive and corrective role that is fundamental to ensure proper functioning of government bodies and entities and, consequently, ensure greater capacity and productivity in the delivery of public goods and services.

Based on the results of the survey presented in this paper and on several diagnosis made during

the past three years, in partnership with the World Bank, TCU is structuring a strategy to strengthen its financial audit function, seeking excellence by adopting international standards and good practices. Consequently, it will be able to add increasing value to Brazilian society.

With these final observations, I would like to thank the SAIs that participated in the survey and the World Bank for its financial support that enabled implementation of the financial audit project.

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Results of TCU performance audits on aerospace defense

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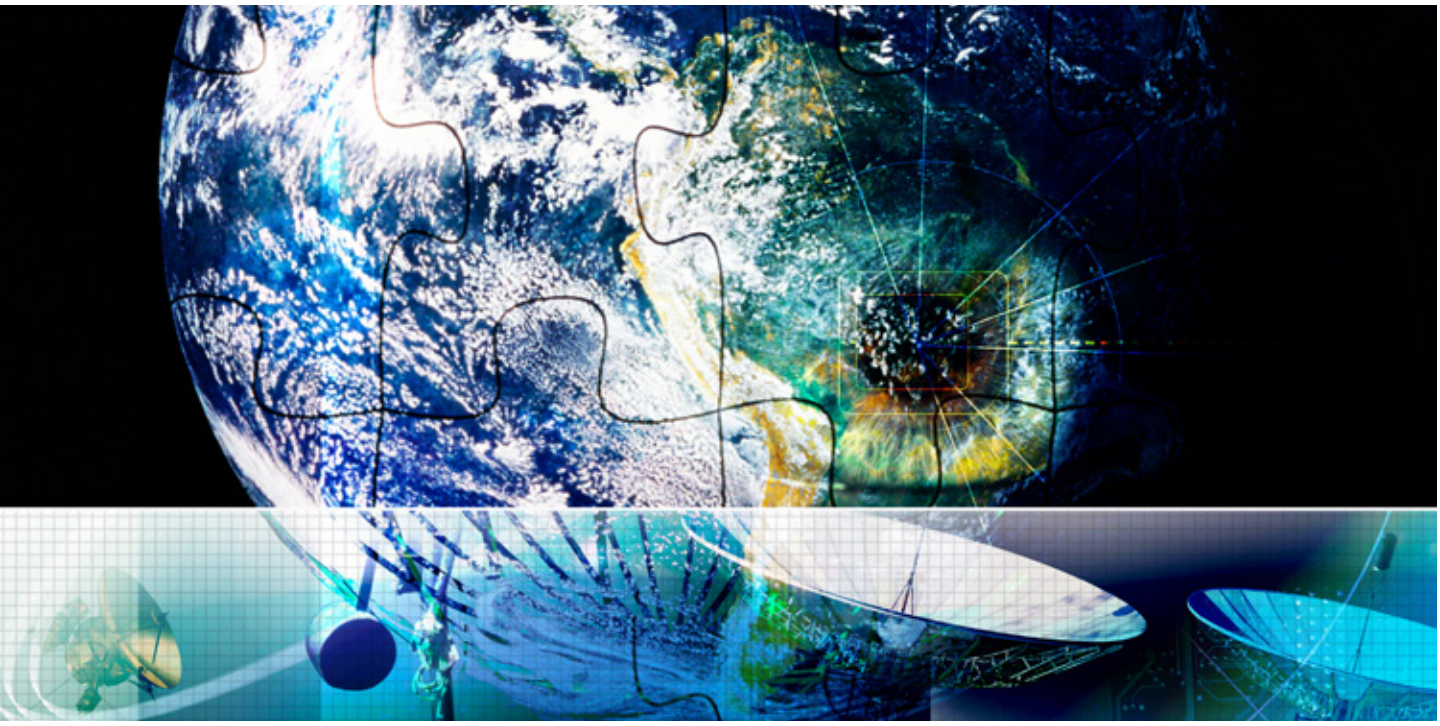
ABSTRACT

The Performance Audits (ANOp) carried out by the Federal Court of Accounts of Brazil (TCU) in the Brazilian Air Force (FAB) resulted in guidelines aimed at improving the management of Aerospace Defense in Brazil. Performance audits conducted both in the EMAer-32 Program and in the Brazilian Airspace Control System (SISCEAB) were beneficial to boost organization and transparency in management. ANOps, however, have not yet proven to be effective as to establishing a real measure of efficiency of the evaluated programs. This was a qualitative survey based on literature review and interviews and in it one can clearly see TCU's in-depth treatment of highly specific and technical Defense subjects, among other things. The survey also revealed opportunities for enhancement regarding improving processes in the control agency itself and the path to fostering better behaviors and techniques in the audited organizations.

Keywords: Aerospace Defense. Efficiency. Performance Audit. Transparency

1. INTRODUCTION

Performance Audits (ANOp) held by the Federal Court of Accounts of Brazil (TCU) regarding



the Brazilian Air Force (FAB) resulted in guidelines aimed at improving the management of the Brazilian Airspace Defense. Performance audits conducted both in the EMAer-32 Program and in the Brazilian Airspace Control System (SISCEAB) were beneficial to boost organization and transparency in management. ANOps, however, have not yet proven to be effective as to establishing a real measure of efficiency of the evaluated programs.

This was a qualitative survey based on literature review and interviews, which have been specially conducted for it (Appendix A). Document analysis includes official documents open for public consultation as well as academic teachings. A total of 54 interviews were conducted: 33 of them with TCU officials, 20 with FAB officials and one with an official from the Ministry of Defense (MD). Political leadership, general managers, area managers and audit professionals were interviewed both at TCU and FAB, and one active director was interviewed at the MD.

The survey results indicate the in-depth treatment of highly specific and technical subjects, among other predominantly positive aspects of TCU's ANOps as to the Aerospace Defense industry. This result was possible due to the multidisciplinary nature of the Court's Technical Staff coupled with an active participation of the officials of the institutions being audited. It also revealed opportunities for enhancement regarding improving processes in the control agency itself and the path to fostering better behaviors and techniques inside the audited organizations.

2. DEVELOPMENT OF PERFORMANCE AUDITS

Performance Audit (ANOp) is developed according to a complex cycle of complementary and sequential phases. Each of these phases contains a key step that triggers the next one. It was designed as such to maintain the ongoing process of reviewing the management of the audited organization. According to TCU's Performance Audit Guidelines - which follows the general guidelines set by the International Organization of Supreme Audit Institutions (INTOSAI) - ANOp is developed as follows: Selection, Planning, Implementation, Reporting, Manager Review, Assessment, Disclosure and Monitoring (Appendix B).

ANOp's cycle begins with the selection of the audit object, i.e., the organization being audited and the program in question. At this stage, one of the essential criteria to be adopted is that of relevance. The audit should not waste any efforts to audit broader aspects of organization or even less important programs. Due to the principle of efficiency - something in the core of ANOp - the audit should

be limited to organizations and programs whose operation have the greatest impact on society and/or public administration.

The phases of **planning**, **implementation** and **reporting** come next. They are usually analyzed together and are the core of the audit itself. The report is presented to the manager who then makes **comments**, thus enriching and validating the findings of the audit. The next phase is the **assessment** by a panel of TCU ministers who later disclose their ruling not only to the audited manager, but also to society as a whole. **Monitoring** will end the cycle of ANOP, by checking the compliance status of the recommendations and resolutions addressed to the organization under evaluation.

3. RECOMMENDATIONS AND RESOLUTIONS

In ANOp processes, as well as other types of processes, TCU issues recommendations and resolutions, an official procedure set forth in the Internal Rules of TCU (RITCU). These two procedural commands help TCU set forth preventive and educational control over the organizations audited, something distinct from the direct application of its sanctioning power. ANOp processes do not directly result in fines or penalties according to the methodology in force at TCU.

Recommendations and resolutions, however, are two different things. The recommendations do not result in mandatory obligations and the lack of compliance with it by the organization does not result in a penalty for the manager in charge of the organization. The recommendation is an educational measure that has nothing to do with the sanctioning power of TCU.

Resolutions, on the other hand, are of a compulsory nature. The disrespect for it or its non-adoption by the supervised organization may lead to the imposition of a penalty, usually a monetary fine to the manager in charge of the organization. Resolutions, despite being intended to be of a preventive and educational nature, are closely tied to the sanctioning power of TCU.

Therefore, upon receiving ANOp's recommendations, the manager in charge of the organization can make his/her own decisions about adopting such procedures for his/her organization. If he/she does not deem it relevant or appropriate, the manager may simply choose not to follow it, without any consequences. As for resolutions, the manager will be required to implement it in the organization, under penalty of being held liable.

4. PERFORMANCE AUDIT OF THE EMAER-32 PROGRAM

The EMAer-32 program was the subject of TCU's ANOp, and the whole auditing cycle was completed through extensive monitoring. The EMAer-32 program is a program coordinated by the Brazilian Air Force General Staff (EMAer-32) that uses 32% of the proceedings of the Additional Airport tax (ATAERO) in the infrastructure of aerodromes considered to be of interest by the Brazilian military, thus financing the Development of Airports of Military Interest Program (PDAIM), all in accordance with the National Defense Policy (PDN) (BRAZIL, 2005).

> Airports of military interest are all those airports that support civilian or military aircrafts that could eventually be used for technical landing for military flight operations, as well as those that can be used as an alternative landing (BRAZIL, 2003a).

The EMAer-32 Program is of particular relevance for the Aerospace Defense. The airports of military interest are remote operating bases from where the Brazilian military aviation would take action in real combat situations. They are also important to support aircrafts in distress.

TCU issued a total of 14 recommendations on Ruling 36/2003-P (BRAZIL, 2003a). 12 were intended for FAB (Appendix C), one for the Ministry of Defense (MD) and one for the Ministry of Planning, Budget and Management (MPOG) (Appendix D). At the end of the monitoring carried out by TCU, out of the 14 recommendations, seven were considered **implemented**, six were considered **under implementation** and 1 was considered **not implemented**. The monitoring carried out by TCU under the EMAer-32 Program resulted in Rulings 1724/2003-P (BRAZIL, 2003b), 1225/2004-P (BRAZIL, 2004) and 162/2009-P (BRAZIL, 2009a), whose summaries can be seen in the table in Appendix E).

Out of the 12 recommendations issued to FAB (9.1.1 to 9.1.12), TCU considered seven of them as **implemented** and five as **under implementation**. The only recommendation TCU considered **not implemented** (Recommendation 9.2.1) was addressed to the MPOG and TCU considered the recommendation issued to the MD (recommendation 9.3.1) as **under implementation**. In the end, TCU understood that 92.86% (ninety-two point eighty-six percent) of the recommendations of Ruling 36/2003-P (BRAZIL, 2003a) were complied with, taking into account the **implemented** and **under implementation** recommendations. The chart in Appendix F shows the compliance status according to Ruling 36/2003-P.

It is noteworthy that none of the recommendations to FAB was assessed as not **implemented**, something that displays the high level of compliance of FAB with the guidelines issued by TCU. This comes to show that the general idea that military institutions are resistant to external control is not accurate. The chart in Appendix G shows the clear implementation of the recommendations of Ruling 36/2003-P by FAB.

Among the recommendations issued to FAB, recommendations 9.1.1 and 9.1.2 of Ruling 36/2003-P (BRAZIL, 2003a) are of particular importance for the greater efficiency in the management of EMAer-32 Program. Recommendation 9.1.1 addressed the need to clearly state the purpose of the program and define its affordable costs. Recommendation 9.1.2, in turn, addressed the ever-recurring question of performance indicators.

Item 9.1.1 of Ruling 36/2003-P recommended that FAB should seek specific rules for EMAer-32 Program so that the purpose of the program and all costs that may be borne by it become clear. It is a very important recommendation, since the lack of clarity in defining the purpose of the Program may alone lead the governmental effort to failure. Among the problems resulting from this lack of clarity that were later ranked by TCU as **misuse of priority**, there were investments in the Aerospace Museum of Aviation (MUSAL), which is not an operating unit of FAB and already receives funds from the Ministry of Culture (MinC). In particular, TCU highlighted the misuse of priority in the face of contingencies of resources that would be used to acquire equipment and the execution of necessary activities in the Amazon region. (BRAZIL, 2009a).

Item 9.1.2 of the same ruling recommended FAB to prepare performance indicators that could evaluate the effectiveness, efficiency and possible economy to the EMAer-32 Program. The recommendation was well received by FAB, whose officials involved with the program made a point of highlighting the strengthening of their management skills as a result from TCU's intervention, in particular by lining up the indicators according to the type of performed project or activity. However, even with the implementation of the indicators, there is still a problem familiar to those involved with the study of defense budget and economy that continues to challenge managers and auditors: measuring the efficiency, as well as the cost-benefit analysis of the Aerospace Defense expenses. The conclusion of Ruling 162/2009-P (2009a) is quite clear about not being possible to assess aspects of the economic benefits and cost effectiveness of the audit.

> Due to the lack of a historical series of cost assessment of construction sites, **it has not been possible to measure the economic benefits** of performance auditing in the Emaer-32 program, and the consequent **comparison of the cost-effectiveness of the audit** (emphasis added) (BRAZIL, 2009a).

> Performance audit is considered to contribute to the improved performance of the Emaer-32 Program, **although economic benefits cannot be measured** (emphasis added) (BRAZIL, 2009a).

5. SISCEAB'S PERFORMANCE AUDIT

The Brazilian Airspace Control System (SISCEAB) was also the subject of TCU's ANOp. The inspection was held at the Ministry of Defense (MD), the Brazilian Air Force (FAB), the Brazilian Company of Airport Infrastructure (Infraero) and the National Agency of Civil Aviation (ANAC) and had the purpose of evaluating the status of air traffic control in Brazil. The audit followed a series of problems related to air traffic control that involved, among other cases, the collision of two civil aircrafts over the Amazon, a situation the Brazilian press named "aerial blackout". Minister Augusto Nardes, the Ruling's Rapporteur, the ANOp focused on:

> (...) Examining, through auditing, the severe crisis called "aerial blackout", that stem from the negligence of the government regarding the management of air traffic control, something that has been causing serious problems to the population not only because of flight delays and cancellations - which postpone everyone's commitments - but also with consequences on economic activity and life, our greater asset (BRAZIL, 2006).

The proper functioning of SISCEAB is of particular importance for the Aerospace Defense. It is linked to highly specific technical and managerial units such as the Department of Airspace Control (DECEA) and the Integrated Air Defense Centers and Air Traffic Control (CINDACTA). The monitoring of movement in the Brazilian airspace and the possibility of intercepting any unauthorized aircraft flying over the country depend on it. SISCEAB constitutes the heart of air traffic control and embodies the fundamental ability to ensure the safety of civil and military aircraft flights, besides triggering the alarm against the intrusion into Brazilian airspace.

TCU issued a total of eight recommendations and 11 resolutions in ruling 2420/2006-P (BRAZIL, 2006). Four recommendations were addressed to the Chief of Staff's Office (Appendix H) and one recommendation was set out for each of the following organizations (Appendix I): National Agency of Civil Aviation (ANAC), Brazilian Company of Airport Infrastructure (INFRAERO), the National Secretariat of Treasury (STN) and the Comptroller General (CGU). There were four resolutions addressed exclusively to the MD (Appendix J); five exclusively to FAB (Appendix K); one to the MD, to FAB and to INFRAERO altogether (Appendix J) set out in item 9.2 of the Ruling, and one to the MD, to the MOPG and the Chief of Staff's Office set out in item 9.8 of the Ruling.

Out of the 19 guidelines of Ruling 2420/2006-P (BRAZIL, 2006), both in the form of recommendations as well as resolutions, 14 were subject to further monitoring by TCU. Out of the 14 monitored guidelines, two were considered implemented, one was considered **partially implemented** and 11 were considered **under implementation**. At first TCU did not monitor the recommendations set out in items 9.7 (Chief of Staff's Office) and 9.9 (CGU). The monitoring carried out by TCU regarding SISCEAB resulted in Resolution 2464/2007-P (BRAZIL, 2007), and its summary can be seen in the table in Appendix G).

Out of the six resolutions issued to FAB (9.2 and 9.3.1 to 9.3.5), TCU considered one of them as **implemented**, one was considered **partially implemented** and four were considered **under implementation**. It is important to highlight, once more, that just like what had taken place with the EMAer-32 Program, the resolutions set out to FAB regarding SISCEAB received a great deal of attention. We understand that as the organization's high level of compliance with respect to TCU's advices. The chart in Appendix M represents FAB's fulfillment of Ruling 2420/2006-P.

Among the resolutions set out for FAB, items 9.3.1 (**implemented**), 9.3.3 (**partially implemented**) and item 9.3.4 (**under implementation**) deserve special attention. The first item refers to the technical characteristics of the flight control of the aircrafts that travel in the Brazilian airspace. The second item has to do with SISCEAB's budgeting and financial planning. The last one refers to technical and contractual matters regarding the useful life of the radars adopted by the system.

According to item 9.3.1 of Ruling 2420/2006-P, TCU ordered FAB to **study the feasibility of the system of lateral separation (OFF SET) in the airways, in addition to the already planned vertical separation**. A highly technical resolution, aimed at better identifying airline routes and flying targets upon FAB's exercises of air traffic control. A resolution that shows TCU's positive influence to improve all of the activities in the audited organizations, without being intimidated by the highly technical areas of the audited organizations.

As for item 9.3.3, TCU ordered FAB to broadly reassess the cost of SISCEAB. FAB should get information from ANAC about the volume of air traffic, to identify the real material and human needs of the system. A resolution clearly aimed at SISCEAB's planning, showing TCU's intention to act in this important focal point of the management of Aerospace Defense. TCU has been firmly positioning itself for the strengthening of planning bodies and understands that a lot more effort should be devoted to this phase of management, for its proper performance determines the quality of the results that may be obtained in the subsequent phases. According to Ruling 2420/2006-P, TCU decided that:

> 9.3. Determine that the Armed Forces Command: (...)
>
> 9.3.3. Reassess the planning of SISCEAB's funding, seeking to periodically receive from ANAC the necessary information for effective measurement of the increase in air traffic volume, so that the real needs for expansion and modernization of human and material resources of the system can be readily identified, tracking the trends and demands of the airline industry (BRAZIL, 2006);

Finally, according to item 9.3.4 of Ruling 2420/2006-P, TCU ordered FAB to present technical feasibility studies concerning the useful life of the radars. FAB **should find solutions to eliminate the time gap between the useful life of radars established by DECEA and the deadlines for the supply of parts set out in the contracts**. A resolution of technical and contractual nature that highlights TCU's commitment to address crucial issues related to the management of Aerospace Defense activities, not merely exercising its external control role. The subsequent monitoring of item 9.3.4 makes TCU's harsh positioning before the audited organizations, in particular, in this case, in relation to the Aerospace Defense organizations. As to the contracts of management of the maintenance and supply of spare parts for radar, one can clearly see that, despite FAB's contrary allegations TCU made sharp remarks:

> **Despite the claims of the Armed Forces Command** that occasional obsolescence in the radar network does not compromise SISCEAB's performance, as well as that there is an ongoing process of modernization and replacement of equipment, **we believe that the absence of guaranteed supply of spare parts** beyond the usual 10 years established by the equipment's manufacturers **leaves room to occasional failures in radar network (emphasis added)** (BRAZIL, 2007).

In the exercise of its government audit duty, TCU does not seem to be limited by the intensity of the technical issues of the objects audited nor by the specificity of the topics covered by the different areas of government matters. The highly specific themes and the intense technical characteristics of Aerospace Defense at no time made TCU's assessment a superficial one. Regarding ANOP, TCU proves to be quite confident to properly deal with the matters in depth thanks not only due to its quality and multidisciplinary Technical Corps, but also due to a very special feature of the ANOp processes: the active participation of the audited organization's employees in the construction of the audit. In his report for Ruling 2464/2007-P, Rapporteur Minister Augusto Nardes made harsh comments on the poor coordination between different organizations responsible for the management of Brazilian airspace. In his words:

> (...) I reinforce my opinion that the **organizations involved in the management of Brazilian airspace need a more coordinated strategy, aimed at increasing the market efficiency of the sector**, especially with regard to the safety of users. The survey carried out by 3rd Secex shows that, although the organizations acted upon the problems disclosed in Ruling 2.420/2006-TCU-Plenário, more substantial steps need to be taken, because the serious deficiencies that had been previously found remain unchanged, and our great concern remains. **(emphasis added)** (BRAZIL, 2007).

6. OPPORTUNITIES FOR ANOP TO BE IMPROVED

The 54 respondents had the opportunity to speak about opportunities for improvement in the ANOp processes conducted by the External Control Agency of Aerospace Defense at TCU and FAB. Altogether, 28 identified opportunities for improvement, according to their perception. The remaining 26 respondents chose not to comment on it.

Opportunities for improvement identified by the respondents were classified as opportunities for **improvement** and opportunities for **encouragement**. Opportunities for improvement should be understood as those focused on TCU's internal processes, i.e. possible changes to be adopted by TCU in its own procedures, in order to obtain better results in the ANOps. Opportunities for encouragement should be understood as those regarding the changes introduced in the FAB or other organizations as a result of TCU's ANOp.

Apart from having been classified as opportunities for **improvement** or **encouragement**, as steps meant to be taken by TCU or behavioral changes to be adopted by FAB or other organizations, the answers of the respondents were subdivided according to the purpose to be achieved. So, we reached a total of ten opportunities for improvement identified by respondents, with seven improvements and three encouragements. The table in Appendix N summarizes the opportunities for improvement that were listed. The ones intended for TCU begin with the verb **improve** and those intended for FAB or other organizations begin with the verb **encourage**.

7. IMPROVEMENT OF CONDUCTS AND TECHNIQUES AT TCU

The respondents presented opportunities for improvement so that TCU could improve the ANOp's processes. Conducts and techniques that, according to respondents, could make TCU's ANOp in Aerospace Defense to have even greater-impact results.

- **Improve knowledge of those being audited:** an opportunity for improvement related to a perceived need to better understand TCU's audited organizations. Respondents point out that the characteristics of the Aerospace Defense are very dynamic and there should be a constant effort for external auditors to remain updated.

- **Improve effectiveness:** an opportunity for improvement aimed at ensuring that the conclusions of TCU's ANOp actually generate the expected results in Aerospace Defense or any area of public administration. The respondent who identified an opportunity for improvement highlighted that he did not perceive the practical effects of TCU's recommendations in the management of Aerospace Defense.

- **Improve monitoring:** an opportunity for improvement focused on ensuring that TCU monitors whether the interventions that resulted from ANOp are indeed being adopted by the organizations. Monitoring is consistent with the procedures adopted in other Supreme Audit Institutions (SAI), such as the **Australian National Audit Office** (ANAO), Australia's SAI, where the monitoring (**follow-up**) is designed to verify the implementation of ANOp's recommendations (AUSTRALIA, 2008: 3), and Riksrevisjonen, Norway's SAI, where monitoring is seen as an opportunity to evaluate the effects of the recommendations issued by the control organizations that were later adopted by the audited organizations (NORWAY 2005: 47).

- **Improve external partnerships:** an opportunity for improvement that aims for TCU to look up for effective partnerships with the audited organizations in order to make them realize the true meaning of ANOp and actively contribute to build its conclusions.

- **Improve internal partnerships:** an opportunity for improvement in communication among TCU's own member units, so that its various sectors act cooperatively in search of better outcomes for the management of public organizations, particularly through the processes of ANOp.

- **Improve the auditor's profile:** it refers to the selection of auditors by TCU, with greater skills, aptitude and expertise focused to perform ANOp in each one of the audited organizations, and in

particular here, organizations dealing with aerospace defense activities.

- **Improve planning:** it concerns the better planning of ANOp inside TCU, so that they can focus on more relevant programs and more central aspects of the management of the audited organizations.

8. ENCOURAGING BEHAVIORS AND TECHNIQUES IN THE AUDITED ORGANIZATIONS

The survey also pointed out possible opportunities for improvement related to the encouragement of improved behaviors and techniques in the audited organizations. One of the special purposes expected from TCU's ANOP in public organizations is to introduce behaviors and techniques to improve management processes. We identified among the respondents of this performance audit of Aerospace Defense the expectation that TCU's ANOp may induce better managerial efficiency, better planning and realization of related academic research.

We should promptly highlight that the expectations of encouragement of conducts and techniques in the audited organizations exceed those for improvement focused on the behaviors and techniques of TCU itself. The expectation of those involved with the Brazilian Aerospace Defense is clear: they would like to see greater efficiency in their organization's processes. The graph of Annex O reveals this expectation: among the main changes expected by both TCU and FAB's officials is the encouragement of better conducts and techniques in the audited organizations.

The opportunity for improvement that had the highest expectation was of more efficient management of the Aerospace Defense organizations. Something that makes perfect sense with the institutionalized notion that we must seek the best possible result from the use of the available public resources, in order to obtain the best cost-benefit relation in the use of such resources. Respondents had thus great expectations for TCU's ANOp to contribute to the management practices of Aerospace Defense to get better results at the lowest possible cost.

Another opportunity for improvement had to do with planning. Respondents both from TCU and FAB expect the planning of Aerospace Defense management to be better conducted with the adoption of the recommendations and administrative resolutions issued by TCU after the ANOp. This expectation appears to be consistent with modern trends aimed at improving techniques for the planning of organizations, as well as for the adoption of the most appropriate management techniques by organizational planners.

Finally, we identify opportunities for improvement regarding the encouragement of academic research. The universe of administrative survey for the management of Defense and in this particular case, Aerospace Defense seems to be scarce. It is clear that respondents hope that ANOp may contribute to the encouragement of a greater number of scholars and surveyers for the subject.

9. CONCLUSION

TCU's ANOp regarding FAB resulted in important recommendations and decisions aimed at improving the management of the Brazilian Aerospace Defense without, however, being able to establish a real measure of efficiency of the evaluated programs. Once adopted by FAB, TCU's guidelines contributed to the evolution of behavior and management practices, with an overall result in best practices with clear goals and results presented with more transparency. However, the cost-benefit analysis of the Aerospace Defense programs has not been achieved by TCU: the challenge of measuring the efficiency of spending on defense (in particular the Aerospace Defense) remains.

An example of this organizational gap on the inability to assess the efficiency of the Aerospace Defense programs is evident in item 9.1.2 of Resolution 36/2003-P. In this item, TCU recommended FAB to prepare performance indicators that could evaluate the effectiveness, efficiency and economy of the EMAer-32 Program. However, although the recommendation was well received at FAB, where the need for the strengthening of management capacity was recognized after the TCU intervention, the External Control agency confirmed that it was not possible to accurately determine the efficiency of expenditures.

Performance Audit (ANOp) is developed according to a complex cycle of complementary and sequential phases. Each of these phases contains a key step that triggers the next one. It was designed

to maintain the ongoing process of reviewing the management of the audited organization. TCU's ANOP on FAB generated recommendations and resolutions. The recommendations are not mandatory and the lack of compliance with it by the organization does not result in a penalty for the manager in charge of the organization. Resolutions, on the other hand, are of a compulsory nature. The disrespect for it or its non-adoption by the supervised organization may lead to the imposition of a penalty, usually a monetary fine, to the manager in charge of the organization.

TCU ended the ANOP cycle with two cases of performance audits of Aerospace Defense: one regarding the EMAer-32 Program, in which it analyzed the application of the 32% Additional Airport tax (ATAERO) at airports of military interest, and the second one, the SISCEAB and the airspace control. The ANOP held at the EMAer-32 program resulted in 12 recommendations for FAB, seven of which were considered implemented and five were considered under implementation by TCU. The ANOP held at SISCEAB resulted in six resolutions addressed to FAB, and one was considered implemented by TCU, one was considered partially implemented and four were considered under implementation.

None of the recommendations or resolutions aimed at FAB was assessed as **not implemented** or **not met** in both of the performance audits (the EMAer-32 Program as well as the one of SISCEAB), which shows the high level of FAB's compliance with respect to the guidelines issued by TCU. This comes to show that the general idea that military institutions are resistant to external control of organizations with constitutional and statutory commands, such as TCU, is not accurate.

When performing ANOp in Aerospace Defense industry, TCU had to deal with very specific issues of highly technical specificity. The high level of expertise of the audit objects, in general, was not seen by TCU as something that limited its action, but as a challenge to be overcome. That is very special feature of ANOp processes that should be highlighted: the active participation of the audited organization's employees in the construction of the audit. ANOP are instruments of control by which TCU earns a more thorough knowledge about the different organizations of the public administration, constituting a true work of organizational intelligence.

The survey identified opportunities for improvement, based on interviews and analysis of the available official documents. These are opportunities for improvement related to the process of TCU's ANOp itself and also for the encouragement of better conducts and techniques in the audited organizations. We highlight the opportunities identified for greater efficiency in the management of the Aerospace Defense organizations as one of the greatest expectations of the respondents. Thus, some recommendations may be suggested to TCU regarding the execution of ANOp on Aerospace Defense based on the survey as well. Some of them may be even stretched to other areas of public administration:

- **Improve knowledge of those being audited:** an opportunity for improvement related to a perceived need to better understand TCU's audited organizations. Respondents point out that the characteristics of the Aerospace Defense are very dynamic and there should be a constant effort for external auditors to remain updated.

- **Improve effectiveness of the audits:** an opportunity for improvement aimed at ensuring that the conclusions of TCU's ANOp actually generate the expected results in Aerospace Defense or any area of public administration. Recommendations should focus on possible practical results.

- **Properly monitor the recommendations and resolutions:** a recommendation also focused on the issue of ANOp's effectiveness and that deals with both the convenience and the need for TCU to systematically evaluate the effects of the recommendations and decisions intended for the audited organizations.

- **Build external partnerships:** TCU should establish effective partnerships with the audited organizations in order to make them realize the true meaning of ANOp and rely on its contribution.

- **Improve internal partnerships:** an opportunity for communication improvement

among TCU's own member units, so that its various sectors act cooperatively in search of better outcomes for the management of public organizations, particularly through the processes of ANOp.

- **Improve the auditor's profile:** it refers to the selection of auditors by TCU, with greater skills, aptitude and expertise focused to perform ANOp in each one of the audited organizations.

- **Strengthen the planning of ANOp:** it concerns the better planning of ANOp inside TCU, so that they can focus on more relevant programs and more central aspects of the management of the public organizations, particularly through ANOp's processes.

- **Make efficiency a top priority in the audited organizations:** a recommendation to make the ANOp held in Aerospace Defense to result primarily on recommendations and resolutions aimed at increasing the cost-effectiveness of public resources, including the definition and use of performance indicators specifically designed to do so.

- **Demand better planning in the audited organizations:** it is expected that TCU's ANOp result in recommendations and resolutions aimed at improving systematic planning in the management of Aerospace Defense.

- **Foster academic research:** a recommendation concerning the expectation that TCU, the Brazilian SAI and central organization of the External Control System of Brazil stimulate academic research regarding ANOp and the search for a more efficient public administration.

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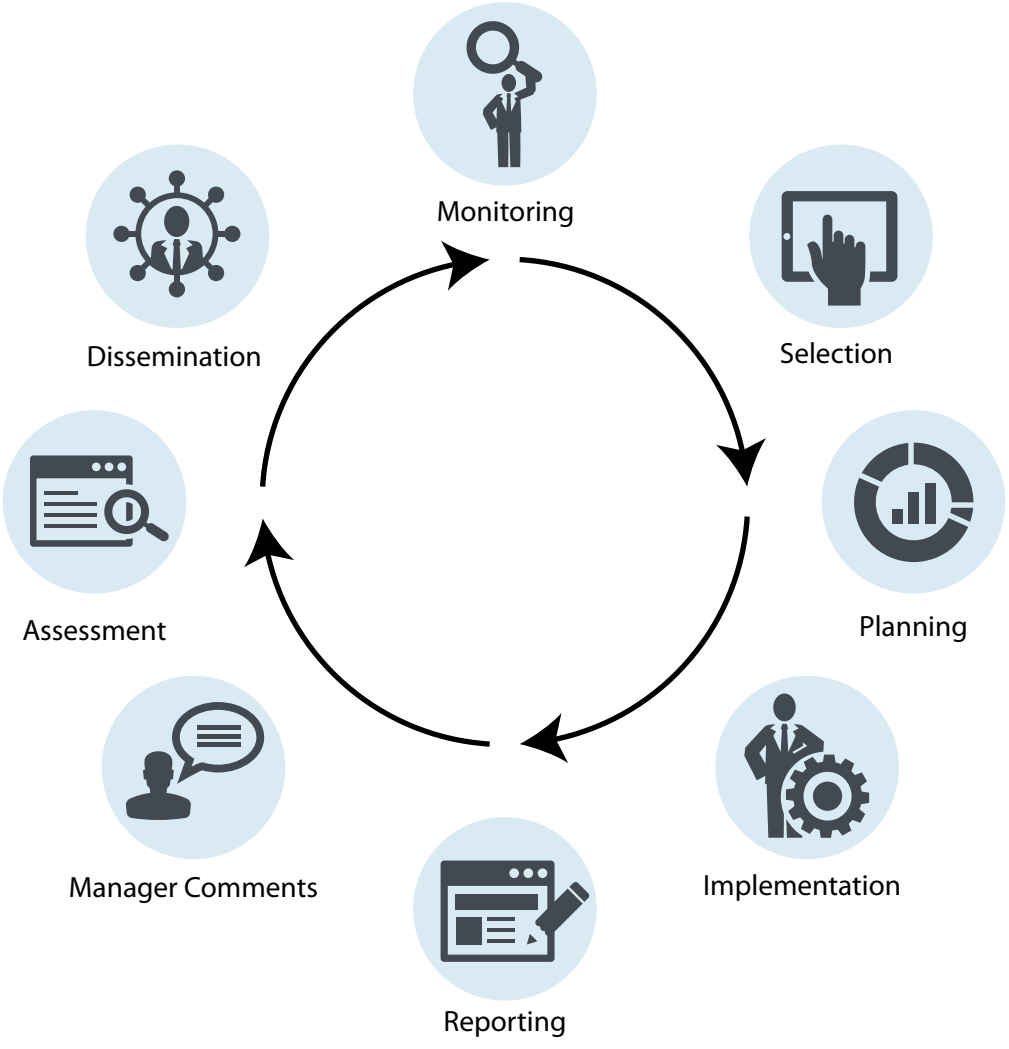
APPENDIX

APPENDIX A

Interviews conducted at the Federal Court of Accounts of Brazil (TCU), at the Brazilian Air Force (FAB) and at the Ministry of Defense (MD)			
Alberto Tavares de Oliveira	FAB	José Antônio dos Santos Raposo	FAB
Alfredo Fernandes de Jesus	FAB	José Carlos Santos	FAB
Ana Lúcia Epaminondas	TCU	Juniti Saito	FAB
Ariane de Almeida Pitassi Sales	FAB	Larissa Caldeira Leite Leocádio	FAB
Benjamin Zymler	TCU	Lidercio Januzzi	FAB
Carlos Alberto Flora Baptistucci	FAB	Luciana Nunes Goulart	TCU
Carlos Alberto Sampaio de Freitas	TCU	Luciano dos Santos Danni	TCU
Carlos André Marques	FAB	Marcelo Barros Gomes	TCU
Carmen Pereira Rêgo Meirelles	TCU	Marcelo Bemerguy	TCU
Claudio Cesar de Avelar Junior	TCU	Marcelo Luiz Souza da Eira	TCU
Claytton Lourenço de Oliveira	TCU	Marco Antônio Carballo Perez	FAB
Dagomar Henriques Lima	TCU	Marcos Araújo Silva	TCU
Daniel de Menezes Delgado	TCU	Maria Lúcia de Oliveira Feliciano de Lima	TCU
Diógenes Corrêa Vieira de Faria	TCU	Mariana Priscila Maculan Sodré	TCU
Édison Franklin Almeida	TCU	Mayalú Tameirão de Azevedo	TCU
Eduardo Sequeiros de Sousa Nunes	FAB	Neimar Dieguez Barreiro	FAB
Eliane Meira Barros de Oliveira	TCU	Nicole Veiga Prata	TCU

Interviews conducted at the Federal Court of Accounts of Brazil (TCU), at the Brazilian Air Force (FAB) and at the Ministry of Defense (MD)			
Eliane Vieira Martins	TCU	Paulo Gomes Gonçalves	TCU
Fábio Mafra	TCU	Ricardo de Mello Araújo	TCU
Francisco Carlos Siqueira Moura	FAB	Ricardo Soares Cortes Real	FAB
Glória Maria Merola da Costa Bastos	TCU	Ronaldo Ferreira da Silva	FAB
Hiram de Carvalho Leite	TCU	Rosendo Severo dos Anjos Neto	TCU
Horácio Sabóia Vieira	TCU	Salvatore Palumbo	TCU
Itiberê Rosado de Farias	FAB	Sebastião Eurípedes Rodrigues	MD
Jesse Andros Pires de Castilho	TCU	Selma Maria Hayakawa Cunha Serpa	TCU
João Luiz Rodrigues	FAB	Sérgio Santi de Souza	FAB
Jorge de Sousa Pantaleão	FAB	Ubiratan Aguiar	TCU

APPENDIX B - ANOP'S CYCLE



Source: TCU's Guidelines for ANOp (BRAZIL, 2010: 10)

APPENDIX C - RESOLUTION 36/2003-P: RECOMMENDATIONS ADDRESSED TO FAB

Item	Recommendation
9.1.1	Commit to seek specific rules for EMAER-32, in which the purpose of the program and all expenses that may be borne by it become clear
9.1.2	Develop performance indicators that can assess the effectiveness, efficiency and economy of the program, based on the rules mentioned in the previous section
9.1.3	Publicize it to all those who are responsible for the implementation, mission, objectives and purpose of the program
9.1.4	Undertake a joint effort with the Ministry of Defense to maintain the Additional Airport Tax (ATAERO) in order not to transfer the responsibility to fund the program to the National Treasury in the future
9.1.5	Promote studies that enable the application of program resources in hospitals, thus avoiding the decentralization of funding for this purpose from the Additional Airport Tax - ATAERO until the completion of such studies
9.1.6	Conduct a study to objectively point relevant areas of the EMAER-32 program that deserve to receive more funds
9.1.7	Promote studies in order to try to bring state governments to aid the airports of common interest through the Federal Aid to Airports Program (PROFAA)
9.1.8	Give priority to the development of the pavement management system, allocating specific budget and human resources for its completion and start of operations
9.1.9	Promote studies about the feasibility of acquiring new ferry pushers or other equipment that enhance the logistics of Comara, (Airport Commission of the Amazon Region) with the aid of Comara itself
9.1.10	Create an audit contact group, with the participation of the Brazilian Air Force General Staff and the Department of Economics and Finance of the Brazilian Air Force, which acts as a communication channel with this court, in order to facilitate the monitoring of the implementation of the recommendations of this Court of Auditors, the evolution of performance indicators of EMAER-32 and the fulfillment of its goals
9.1.11	Submit this Court within 60 days the action plan, with detailed schedule to adopt the necessary measures to implement the recommendations, with the names of those responsible for such measures in order to monitor and evaluate the results
9.1.12	Submit this Court information concerning the progress and consequences of the recommended actions, with the first formalization of such referral taking place six months after this Ruling, followed by a new update in 12 months, and the final update in 24 months after this Ruling

APPENDIX D - RESOLUTION 36/2003-P: RECOMMENDATIONS ADDRESSED TO MPOG AND MD

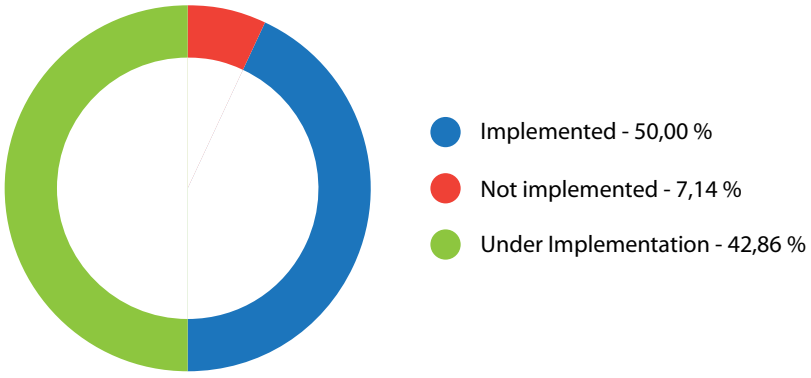
Item	Authority	Recommendation
9.2.1	MPOG	Prepare a study aiming to leave the binding resources of other government authorities/program out of the budget ceiling of the Brazilian Air Force. This is necessary because, just like the Additional Airport tax set forth by Law No. 7.920/89 determines the application of additional resources in the improvement, modernization, renovation, expansion and depreciation of airport facilities and the telecommunications network as well as aid air navigation, these resources can only fund specific programs due to legal requirements. The foregoing inclusion does not allow the verification of the proper use of the rates, fees and other similar instruments, i.e., if they are being used for what they were created for.
9.3.1	MD	Issue orders of resource allocation between the Brazilian Air Force and the Brazilian Company of Airport Infrastructure - INFRAERO destined to the federal government by the Additional Airport tax (ATAERO) as set forth by Law No. 8.399, of 01/07/92.

APPENDIX E - IMPLEMENTATION OF THE RECOMMENDATIONS – RULING 36/2003-P

Recommendations: Ruling n.º 36/2003-Full Court	Status	Recommendations: Ruling n.º 36/2003-Full Court	Status
9.1.1	Implemented	9.1.8	Under Implementation
9.1.2	Implemented	9.1.9	Under Implementation
9.1.3	Implemented	9.1.10	Implemented
9.1.4	Under Implementation	9.1.11	Implemented
9.1.5	Under Implementation	9.1.12	Implemented
9.1.6	Implemented	9.2.1	Not Implemented
9.1.7	Under Implementation	9.3.1	Under Implementation

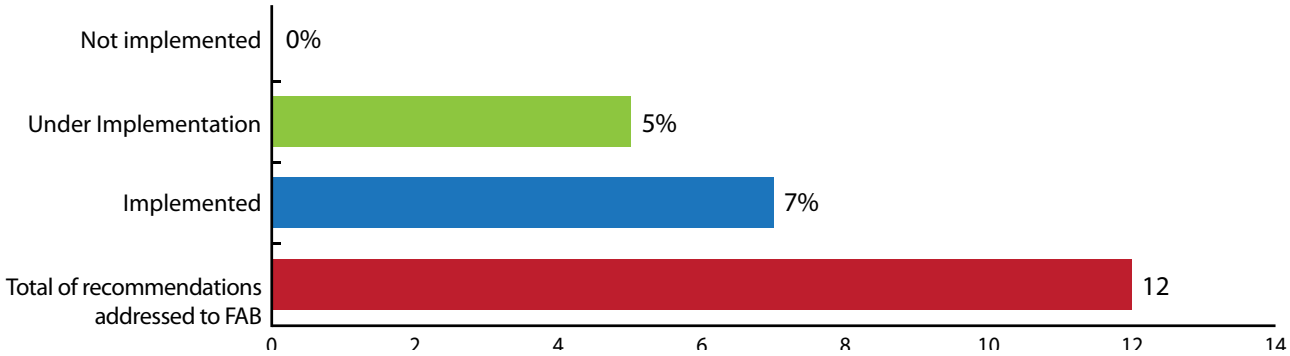
Source: TCU's Ruling 162/2009-P (BRAZIL, 2009a)

APPENDIX F - LEVEL OF COMPLIANCE (%) OF RULING 36/2003-P



Source: Ruling 162/2009-P (BRAZIL, 2009a)

APPENDIX G - FAB'S FULFILLMENT OF RULING 36/2003-P



Source: Ruling 162/2009-P (BRAZIL, 2009a)

APPENDIX H - RULING 2420/2006-P: RECOMMENDATIONS TO THE CHIEF OF STAFF'S OFFICE

Item	Recommendation
9.7.1	Assess the relevance and opportunity, alongside with the Ministry of Defense, the Brazilian Air Force and Infraero to identify the needs for capital investment for SISCEAB in order to verify whether deficiencies take place in the operation and maintenance of the system or any of the actions regarding its expansion, or in both areas
9.7.2	Check the appropriateness, even if only for a short period of time, to provide resources from the National Treasury for Government Actions related to funding and expansion of SISCEAB, besides the funds from the collection of TAN, TAT and ATAERO tariffs
9.7.3	Conduct studies in order to implement an Integrated Coordination and Management of Transportation Infrastructure Policies, with the definition of a central agency and sectorial bodies and enforcement agencies involving, among others, the Ministries of Defense; Transport; Finance and Planning; Budget and Management, in order to establish planning, elaboration, implementation and evaluation model for government actions needed to promote the integration of the entire transportation sector, ensuring the provision of adequate public services, in accordance with the principles of regularity, efficiency and continuity
9.7.4	Conduct studies to define a government department in charge of establishing direct relations with TCU in order to oversee and coordinate the implementation of preventive and corrective measures suggested under the scope of a performance audit, giving them greater effectiveness through the adoption of more timely governmental actions

APPENDIX I - RULING 2420/2006-P: RECOMMENDATIONS ADDRESSED TO ANAC, INFRAERO, STN AND CGU

Item	Órgão	Recomendação
9.4	ANAC	exija dos membros consultivos da Comissão de Coordenação de Linhas Aéreas Regulares (COMCLAR) a devida motivação para os pareceres relativos à concessão ou alteração de Horários de Transporte (HOTRAN), de modo a dar cumprimento integral ao disposto no art. 50 da Lei n. 9.784/1999
9.5	Infraero	faculte ao Força Aérea Brasileira o acesso aos dados e sistemas relativos à arrecadação das tarifas TAN, TAT e ATAERO correspondente, na hipótese da inexistência de procedimento dessa natureza

Item	Órgão	Recomendação
9.6	STN	avalie a conveniência e oportunidade de inserir os procedimentos e dados relativos às tarifas de uso das comunicações e dos auxílios à navegação aérea (TAN), e uso das comunicações e dos auxílios rádio e visuais em área terminal de tráfego aéreo (TAT), no Sistema de Administração Financeira do Governo Federal (SIAFI), uma vez se tratar de recursos públicos, sem a natureza de receita própria, mas de tributo que apenas é arrecadado por ente não integrante do Orçamento Fiscal
9.9	CGU	avalie o cumprimento das metas previstas no plano plurianual, a execução dos programas de governo e dos orçamentos da União, bem como comprove a legalidade e avalie os resultados, quanto à eficácia e eficiência, da gestão orçamentária, financeira e patrimonial nos órgãos e entidades da administração federal, especialmente dos órgãos e entidades objeto da presente auditoria

ANEXO J - RULING 2420/2006-P: RESOLUTIONS ADDRESSED TO THE MD

Item	Resolution
9.1.1	Replace the Official Letter number 01/EMAER/R-081 of 26/01/1999, for the proper legal instrument that regulates matters relating to SISCEAB, noting that such substitution may occur upon completion of the review of the percentage rates owed both to Infraero and the Brazilian Air Force regarding TAN and TAT tariffs
9.1.2	Establish periodic and specific procedures aimed at verifying the compliance of management actions relating to deductions of INFRAERO funds from the collections of TAN, TAT and ATAERO tariffs through its Internal Control Secretariat
9.1.3	Make efforts alongside with the Brazilian Air Force in order to enable a special audit by the International Civil Aviation Organization (ICAO), under the Universal Program for Operational Safety Surveillance (PUVSO), aiming to improve the global safety of Brazilian civil aviation
9.1.4	Adopt measures to strengthen the coordinated actions of agencies and entities involved in the implementation of the National Aviation, especially with regard to the effective functioning of the National Civil Aviation Council (CONAC) and the implementation of its resolutions
9.2	Reevaluate along with the Brazilian Air Force and INFRAERO the percentages owed to these two bodies (TAN, TAT and ATAERO tariff revenues) so that they portray the responsibilities of each entity with the costs of funding and investing in SISCEAB

ANEXO K - RULING 2420/2006-P: RESOLUTIONS ADDRESSED TO FAB

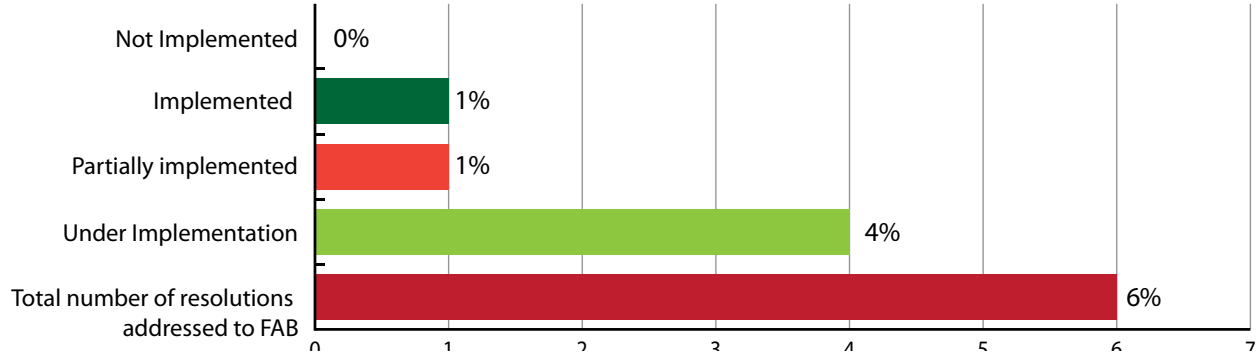
Item	Resolution
9.3.1	Perform studies aimed at verifying the feasibility of the system of lateral separation (OFF SET) in the airways, in addition to the already planned vertical separation
9.3.2	Wisely evaluate the convenience and opportunity to meet the human resource needs related to SISCEAB when planning the allocation of senior staff
9.3.3	Reassess planning of the funding of SISCEAB, seeking to periodically obtain the necessary information for effective measurement of the increase in air traffic volume with ANAC, so that the real needs for expansion and modernization of human and material resources of the system can be readily identified, tracking the trends and demands of the airline industry
9.3.4	Make technical feasibility studies in order to find solutions to eliminate the time gap established by DECEA between the useful life span of radars and the terms defined for the purchase of spare parts for such equipment
9.3.5	Guide the Air Navigation Centre Management (CGNA) so that the provision of opinions on the Regular Airlines Coordination Commission (COMCLAR) be preceded by careful analysis of the SISCEAB's conditions

ANEXO L - RULING/RECOMMENDATION IMPLEMENTATION ACCORDING TO RULING 2420/2006-P

Recommendations and Resolutions of Ruling 2420/2006-P	Status	Recommendations and Resolutions of Ruling 2420/2006-P	Status
9.1.1	Under Implementation	9.3.3	Partially Implemented
9.1.2	Under Implementation	9.3.4	Under Implementation
9.1.3	Under Implementation	9.3.5	Under Implementation
9.1.4	Under Implementation	9.4	Under Implementation
9.2	Under Implementation	9.5	Implemented
9.3.1	Implemented	9.6	Under Implementation
9.3.2	Under Implementation	9.8	Under Implementation

Source: Ruling 2464/2007-P do TCU (BRAZIL, 2007)

ANEXO M - FAB'S FULFILLMENT OF RULING 2420/2006-P

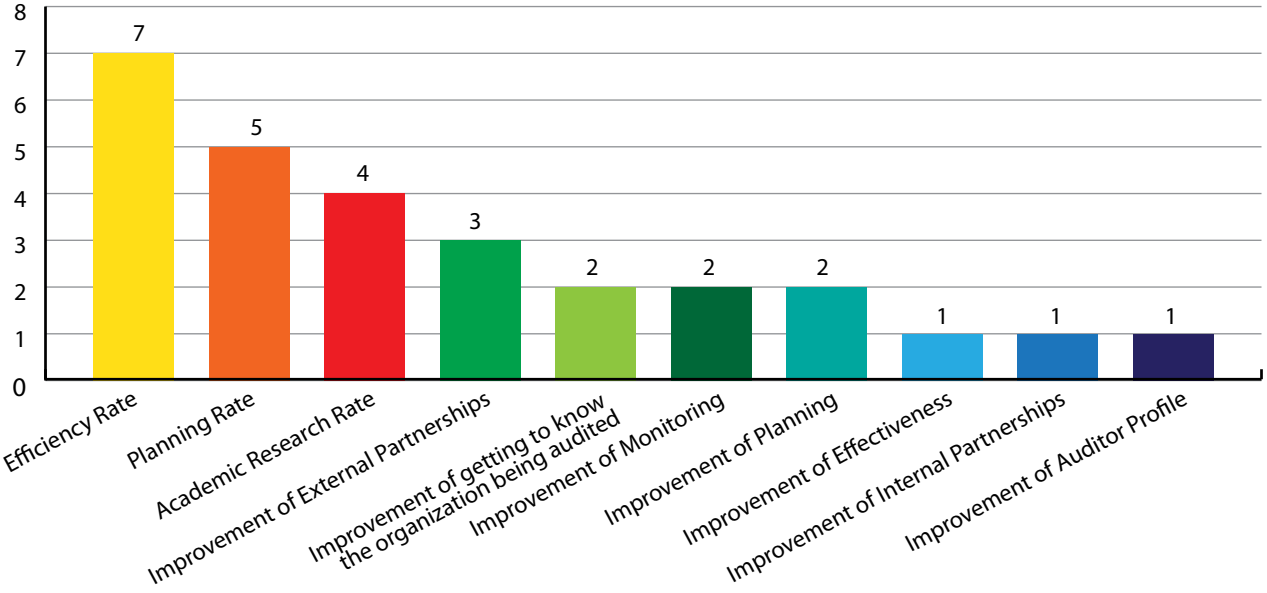


Source: Ruling 2464/2007-P do TCU (BRAZIL, 2007)

ANEXO N - OPPORTUNITIES FOR ANOP TO IMPROVE

Nature of demand	Answers	Percentage (%)
Improve knowledge of those being audited	2	3.7
Improve effectiveness	1	1.9
Improve monitoring	2	3.7
Improve external partnerships	1	1.9
Improve internal partnerships	3	5.6
Improve auditor's profile	1	1.9
Improve planning	2	3.7
Encourage efficiency	7	12.9
Encourage academic research	4	7.4
Encourage planning	5	9.2
No answer	26	48.1
Total	54	100.0

ANEXO O): QUANTITATIVE DISTRIBUTION OF OPPORTUNITIES FOR IMPROVEMENT OF ANOP



The New Government Accounting. Contents. Controversies. Controls.

Flavio Corrêa de Toledo Jr.
Technical Assessor of the Accounting Court of the State of São Paulo

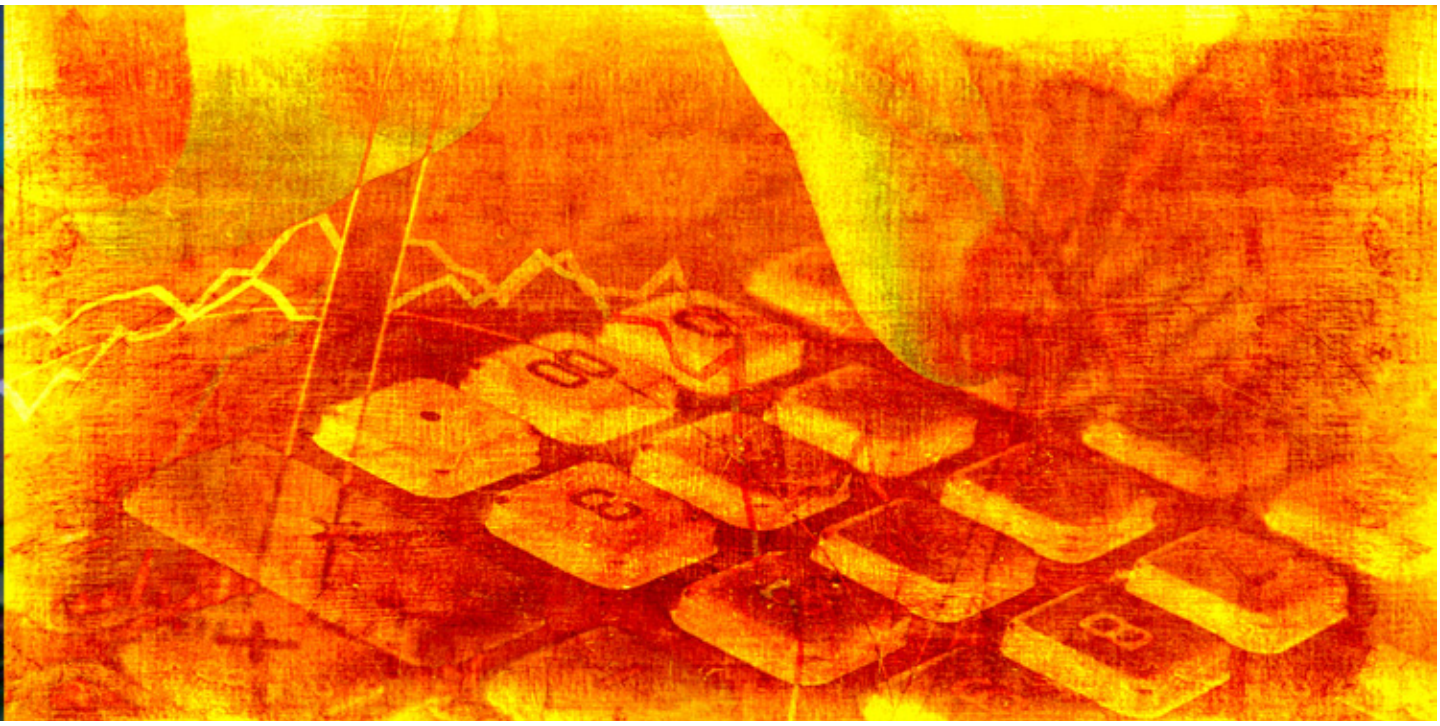
ABSTRACT:

The new standard of government accounting is equivalent to that of the private sector, along with the rulemaking tools: the Ordinances of the National Treasury Office and the Resolutions of the Federal Accounting Council, one or another are in conflict with certain parts of the basic rules of the Financial Law, no. 4320 of 1964; the format of Balance Sheets; the fact that the said balances do not detail the floating/consolidated debts and the components of financial income; the mandatory nature of reassessing and depreciate fixed property.

Keywords: Accrual Basis. Act 4320 of 1964. DCASP (Public Sector Statements). Equity. MCASP (Public Sector Accounting Guide). Ordinances of the National Treasury Office. PCASP (Public Sector Chart of Accounts). Resolutions of the Federal Accounting Council.

The New Government Accounting seeks to be in keeping with the international standards of the private sector of the economy. Regulation is not imposed by the law, but rather through Ordinances of STN (National Treasury Office) and Resolutions of CFC (Federal Accounting Council).

This is so due to the continuing lack of the supplementary law which will replace act no.



4320/1964, which is referred to in Article 165, paragraph 9 of the Constitution. The fact that dozens of bills are pending approval or were not entertained in the National Congress since 1989 is an illustration of that, in addition to the lack of perspective that they occupy the legal void even in the medium run.

In point of fact, while the Tax Management Council is not instituted legally, STN (National Treasury Office) is in charge of regulating nationwide the aggregation of public accounts, given that this agency is the central accounting entity within the federal government, i.e., for these purposes provided for under Article 50, paragraph 2, of the Fiscal Responsibility Law:

> Article 50 – (...)
>
> § 2º The institution of general rules for consolidating public accounts will be the responsibility of the Federal Government's central accounting agency when the council referred to in Article 67 has not been established.

Nonetheless, in this process, a lingering doubt remains: can an Ordinance, which is an administrative act in nature, overrule the law?

As addressed below, there are parts of the STN Ordinances which are not supported by Act 4320. On account of that, this paper reviews the basic structure of Balance Sheets or the mandatory nature of reassessing and depreciating properties of fixed nature or even the lack of evidence in the Balance Sheet of the floating and consolidated debts and the detailed financial income.

All things considered, the new accounting procedures are in keeping with IPSAS (International Accounting Public Sector Standards), prepared in 1997 by IFAC (International Federation of Accountants), organization gathering 173 countries.

In this scenario, the Ministry of Finance published in 2008 the Ordinance 184, i.e., the initial framework of convergence to the international model of public accounting.

Besides, in that year (2008), CFC (Federal Accounting Council), after debates with the society, introduced the eleven (11) NBCASP (Brazilian Accounting Public Sector Standards), "**having mandatory nature, as of 2010, for public sector entities.**"

In substance, the Public Sector Accounting is grounded on the following assumptions:

- Use of the same chart of accounts for the entire Federation and, consequently, in standardized balance sheets and statements, which serves the purpose to facilitate comparison and aggregation of accounts of the Federal Government, States and Cities.
- Predominantly patrimonialist focus and, on account of this, the recognition of revenue and expenditure on the accrual basis.

- Application of procedures for reassessment, depreciation and provision of government assets and liabilities.
- Implementation of the government cost system.
- Raising the value of the government accounting professional.

The National Treasury Office manages across the country the new accounting system, thus publishing a new edition of MCASP (Public Sector Accounting Guide) every year, which must be used at all government levels.

In its 5th edition, the said guide includes the single chart of accounts (PCASP), the financial statement templates, as well as the budget, equity and specific accounting procedures, given that the specific ones compass special situations, which are extraordinary owing to the applicable laws (for instance: Fundeb, special social security regime; public-private partnerships).

On one side, the single chart, PCASP, establishes rules and the list of accounts to register accounting acts and facts, which are subsequently summarized in public sector financial statements, referred to as DCASP.

The single chart of accounts and the financial statements should be used by all of the governments until the end of 2014 and, under this new template, STN (National Treasury Office) will consolidate, until June 30, 2015, the national accounts.

The said terms were corroborated by STN Ordinance 634, dated 11.19.2013, gathering in only one document previous rules of the new government accounting.

Therefore, as of 2015, government departments which fail to forward statements in keeping with the new accounting standard to the Federal Government will no longer receive contractually-based disbursements from the government (transferências voluntárias). If the fault is ascertained, STN will not settle the liability established under Article 51, paragraph 1, of the Fiscal Responsibility Law.

Notwithstanding the term, the Accounting Court of the State of São Paulo ordered, as of January 2013, that accounting information should be sent according to PCASP (Public Sector Chart of Accounts), which illustrates how the electronic system was assimilated by the said Court: the Audesp[1].

The said advance, in two years, is founded on the National Treasury Office's Technical Note no. 1096/2012: (....) The new deadlines defined in STN Ordinance 753/2012 may be met in advance by the Account Courts if under the jurisdiction of a given case (...)

It should be noted that the new accounting system furthers the accurate proof of equity elements, whether positive or negative, thus unveiling the actual net equity of governmental entities.

On account of this and from any point of view, all of the properties, rights and liabilities will be recognized on accrual basis, i.e., when the triggering fact happens, regardless of receipts and payments.

As an illustration for this priority of the accrual basis, the local government, in the beginning of each year, will bookkeep, in the current assets, the receivables of IPTU (Urban Real Estate Tax), at the same amount of the installments sent to taxpayers and, as current liabilities, 1/12 of vacation and 13th salary owed by the end of each month.

Anyway, it should be noted that, in the budget system, accounting continues to take place when IPTU is actually paid to city treasuries (Article 35, I, of Act 4320 of 1964), or, in the event of vacations and 13th salary, it is assessed on the month of payment or, even before, of the prior global assessment is applied (**item II of the rule above**).

In this scenario, the Government Accounting starts to cope with the equity oscillation as a priority, and not budget execution. That is how Accounting Science essentially understands the equity.

On the other hand, the Constitution and the rules of law prioritize the budget execution, since they are based on it for essential information, such as the primary and nominal incomes, as well as the application in constitutionally-protected industries (Education and Health); not to mention the fact that, only through budget execution, one may check the fulfillment of a number of scheduled targets, the level of investment, the disbursements transferred to other Branches and non-profit sectors, among other capital data to substantiate the lawfulness, efficacy and efficiency of the management of disbursements mandatorily paid by the society.

In other words, in spite of the good intentions of the New Government Accounting, the budgetary system in the governmental sector is way more important than the equity system. In addition to this, attention should be drawn to the impossibility to expend one cent of taxpayer's money without the prior authorization under the annual budget law (Article 167, I and II of CF (Federal Constitution)).

Furthermore, one should point out that the expectation of revenue will hinder frauds and embezzlements. However, the said bookkeeping will happen in a general, global and aggregate manner and not per each taxpayer. Given this generality, instead of the individual approach, how can the new accounting spot the typical frauds in the field of government revenue? If the analysis can only be global and aggregate, shouldn't it be enough to regard the estimated amount, with updates, in the annual budget law?

One should therefore agree to the fact that the individual registration in cities with million taxpayers is not an easy task.

As part of the attempt to value the equity, the government should update the amount of personal and real property, without the prejudice to the right to depreciate it on account of use and wear.

Thusly, nonfinancial assets[2] will no longer be recorded with their farfetched current amounts, they will be bookkept at an amount next to the market reality, which facilitates the assessment of the costs of public services.

On the other hand, the reassessment of properties is an optional and non-mandatory procedure under Act 4320 of 1964:

> Article 106 – The assessment of equity elements shall abide by the following rules:
> (...)
> Paragraph 3 - Reassessments of personal or real properties may be made.

In view of this, the legislature of 1964, however, proposed that the government assets have relevance other than that of the private sector ones. For the latter, equity income is the germane indicator for members, shareholders, and creditors, as the rights and duties account for the debts of the private entity; and the government is a totally different scenario, where assets are typically non-transferable, unleviable and imprescriptible, but, as a matter of fact, governmental entities are not subject to reorganization, and definitely not to bankruptcy.

Therefore, another obstacle to the new government accounting is easily realized: if the founding governing law only suggest but not enforce the revaluation of personal and real properties, how will the External Control impose any penalties for entities which do not do this?

Likewise, the National Treasury Office is bereft of legal foundation to cut contractually-based disbursements from the government when the entity under the federation records its assets following the "old" government accounting, i.e., not revaluating or depreciating them.

Moreover, it is also intended that liabilities reflect the actual status of the governmental entity's debts, compassing long-term debts of the special social security regimes: the so-called actuarial liabilities, which is highly valued to many.

Quantified in actuarial studies, the said liabilities stand for the difference between pensions/retirements and the obligations of the employers and security members; which is analyzed over a period of 35 years.

If that is so, States and Cities of larger dimensions will surpass the thresholds of long-term debts: the consolidated one, given that currently only few surpass this limit.

MCASP (Public Sector Accounting Guide) lists the new financial statements.

- Budget Balance Sheet (annex 12)
- Financial Balance Sheet (annex 13)
- Equity Balance Sheet (annex 14)
- Statement of Changes in Equity (annex 15)
- Statement of Cash Flows (annex 18)
- Statement of Owner's Equity (annex 19)
- Income Statement (annex 20).

Annex 19 will be mandatory only for dependent state-owned companies. Annex 20 is optional for any governmental entity.

In the Balance Sheet, the legal nomenclature, financial and fixed was changed to current and noncurrent, which are the same terms used by private law entities, including state-owned and government-controlled companies.

The comparison between assets and liabilities results in a capital indicator for the new accounting model: the net equity; and not more the positive net worth or negative net worth.

However, the structure of equity accounts opposes to that provided for under Act 4320 (Article 105). In fact, neither one may maintain that the current accounts are independent on the law, nor that all of the noncurrent accounts need for budget permission.

Actually, by the end of the Balance Sheet, as an informative appendix, the former financial and fixed sets of data are included on average, but not detailed.

This is due to the need to know if the financial income, especially when there is surplus, i.e., money surplus which backs the deficit in budget execution and the additional debts, as well as providing the monetary guarantee required under Article 42 of the Fiscal Responsibility Law.

If that was not so, how could the External Control know that the budget deficit was backed by the financial surplus in the previous year?

Given this controversy, the National Treasury, with the **Transition into the New Accounting Plan**, establishes that

> "to allow the calculation of the financial surplus, in accordance with Act 4320/64, the financial and ongoing control will not be made in bookkeeping accounts, but through features of the computer systems, which will allow separating the financial and fixed balance of assets and liabilities."

By the way, the controversy between financial and current was the theme of the opinion on the accounts issued by the Governor of the State of São Paulo for the year of 2011:

> As a matter of fact, the state balance sheet seems to point out to a financial surplus amounting to BRL16.936 bn, a bit more than twice the amount for the previous year (BRL8.417 bn). However, after removing assets and liabilities with no perspective of realization any time soon, one should draw the conclusion that, in fact, the actual financial surplus of 2010 was BRL7.874 bn, reduced in 2011, which posted BRL1.290 bn, a drop of 83.61%, and not, as implied by the accounting items: an increase of more than 100%.
>
> There is no need to consider that the State's Accounting was mistaken, insofar as that the latter is grounded on the national models of the Ministry of Finance, which vehemently prioritize the equity system and, as a consequence, the accrual basis for the public revenue, to the detriment of the cash. On the other hand, it is possible to state that this standardizing effort does not entail care for the fundamental budget system.
>
> The Federal Government adopts this procedure with the purpose to converge the government accounting and the private accounting, although it forgets that, in comparison, the budget is capital for the government, though subsidiary for the private sector.
>
> Therefore, it is advisable that the State's financial income be the result of the difference between the Cash on Hand and the Floating Debt; that is, the calculation will no longer consider the sets of data Receivables and Several of the Financial Assets and, symmetrically, the Debt and Several of the Financial Liabilities.

It is blatant that the financial assets and liabilities are now subsidiary, and not detailed. This gap asks for a supplementary annex, evidencing the floating debt, in keeping with Article 92 of Act 4320 (**remaining debts, deposits and treasury debts**; and this subsidiary item should be required by Account Courts. All this considered, and also as a supplementing of the items of the new accounting, the Account Courts should demand the consolidated debt statements.

In sum, the new Balance Sheet takes for granted fundamental variables of the government finance, such as the composition of the financial income and of the floating and consolidated debts.

In turn, in the Budget Balance Sheet, revenue and expenses are way more specified. Revenues go as deep as the species category. In comparison, the expenditure (**commitment, settlement and payment**) reach the families group and, not as before, per type of debt (**budgetary and additional**). The said opening is backed by the assumptions in the Fiscal Transparency Law.

In an appendix to the balance sheet above, charts for the Remaining Debts will appear, against the original nature of the expenditure. That being so, the said remainders will be qualified per budgetary origin, not remaining in the generalizing group of financial transactions.

Still, the Budget Balance Sheet will bring accompanying notes, showing bank transfers, be them received or made. In fact, these disbursements are not under the scope of the budgets, they have to do with the mandatory monthly disbursement to the other Branches, and the financial aid by the government to government agencies, foundations and dependent companies.

Owing to all of these arguments, the new Budget Balance Sheet will facilitate the adjustments of internal and external controls, notably the relativization of budget deficit *vis-à-vis* the financial surplus of the previous year, and the addition, in the

budget expenses, of financial transfers to government agencies, foundations and dependent companies.

The Financial Balance Sheet is a major temporary account, but, under the new model, has undergone considerable change. As a matter of fact, it will present receipts and payments under the ordinary and restricted accounts (**not anymore per nature and function**), also revealing the financial transfers above between entities under the same government level.

The Statement of Changes in Equity has also undergone a significant modification. This way, it better itemizes the budget revenue and expenditure; displays the transfers out of the budget's scope; and comes up with the entities of quantitative and qualitative changes in equity.

All in all, the new financial and equity balance sheets, and the new equity and cash flow statements, all of them will have two rows: one for the current year; and the other for the previous year, given the low inflation in the country, facilitating advantageous comparative analyses.

In turn, the Cost System will be the basic tool for Internal Control, subsequently serving as basis for decision-making of public managers. This regime is enforced, as can be appropriately remembered by allusion to Articles 85 and 99 of Act 4320 and Article 50, paragraph 3, of the Fiscal Responsibility Law.

According to the guide of the National Confederation of Municipalities[3], the cost system allows answering the following requirements:

- Should the surveillance service be outsourced or the responsibility of the City?
- Should the fleet of vehicles and drivers be kept or should this be outsourced?
- Personal and real properties should be serviced monthly or when needed?
- Should spaces to develop services be rented or constructed?
- Should public servants be registered to undergo training open to public or should this be directly engaged?
- Should vehicles be fueled in private gas stations, should fuel be purchased in bulk or should equipment for a gas station be purchased to serve the agency exclusively?
- Should a physical structure of servants for specialized medical assistance be maintained or should they be contracted when needed?
- Should laboratory test equipment be purchased or should this service be outsourced?
- Should software available on the market be used after adjustment for the special service or should special software be developed?

In view of everything exposed in this paper, internal and external controls, as of 2014, should be heedful of the following:

- Was there a monthly approval, in the current liabilities, of more 1/12 of vacation and 13th salary of servants, given that the said installment has already been settled?
- In the beginning of the year, was there bookkeeping, in the equity system, of IPTU receivables and other taxes, subject to prior assessment (eg.: ISS (Municipal Services Tax), water and sewer rates)?
- In the equity system, was there monthly record of the depreciation of personal and real properties, as well as of the allowance on credit assignments, principally the ones of Overdue Tax Liabilities (allowance for doubtful debtors)?
- In the equity system, was there valuation update of short-term and long-term debts, in addition to the inclusion of actuarial liabilities?
- Was the premises and equipment revaluated from time to time?
- Does the Budget Balance Sheet bring accompanying notes, showing bank transfers, transfers out of budget, for the entities of the same government level?
- Does the Equity Balance Sheet bring an annex showing the financial surplus or deficit for the year?
- Was the Cost System implemented according to the rules established under the budget guideline law (Article 4, I, "e", of LRF)?

NOTES

1 Upon the SDG Communication no. 46, of 2012.

2 Personal properties; real properties; credit assignments, such as, inter alia, the Overdue Tax Liabilities and shares.

3 A nova Contabilidade Pública Municipal; 2013; Confederação Nacional dos Municípios (CNM).

Hiring training and capacity building services for Public Administration personnel: a brief analysis of Decision 439/98, issued by the Federal Court of Accounts - Brazil - Plenary Session

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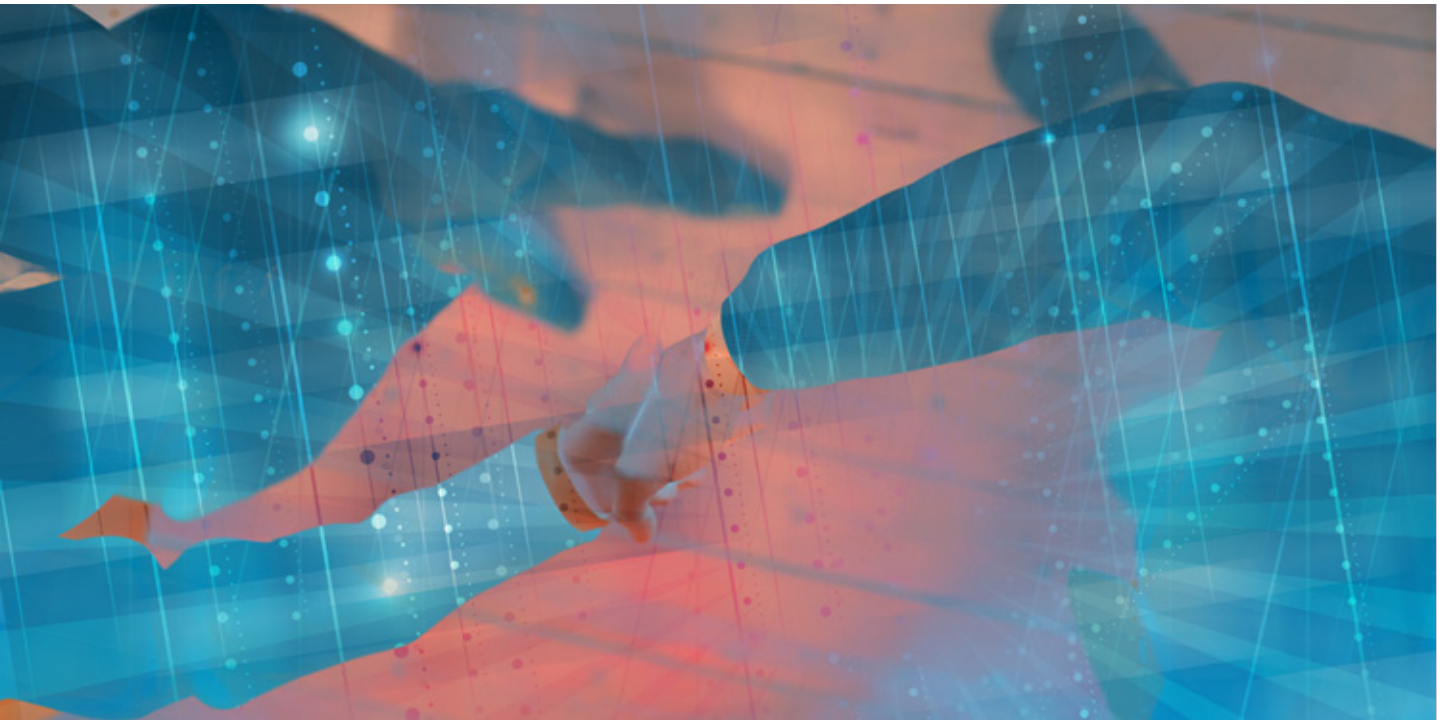
ABSTRACT

The macro regulatory system that guides government contracts presents a great difficulty to those who attempt to apply it, when the need arises to hire staff training services, leading them more often than not to hiring courses and professors that fall short of expectations regarding quality, due to the incorrect notion that such services must be acquired by means of a bid. By contrast, the largest challenge faced by those that must interpret the guidelines lies in the complexity of certain concepts, such as those of "sole source service" and of "recognized expertise", which are requirements for adopting the "no-bid contract" classification, which greatly increase the challenge of hiring the right provider for training services. Despite the fact that the Federal Court of Accounts has already closely examined this issue in its Plenary Decision 439/1998, which concluded that a bid process is not required for this type of contract, difficulties and challenges still persist. By re-examining this ruling, this paper aims to further clarify these concepts, as well as to address issues of a practical nature that arise on a daily basis at Government Schools and which have escaped the always profound examination of the Federal Court of Account's Plenary Session. The purpose of all this is to see the bidding norms always being obeyed, without deviating from their objectives, but also with no loss of efficiency or effectiveness, considering that on-going training of staff members of the Public Administration



is, without a shadow of a doubt, a way of improving the public services available to society.

Keywords: No-bid contract. Training. Uniqueness (sole source).

1. INTRODUCTION TO THE PROBLEM

The heated discussion around how Public Administration entities and bodies must proceed to hire for its staff members, undergraduate and graduate-level courses, presentations, specific trainings, speakers and instructors, while reconciling legal norms for procuring services (Federal Constitution, Article 37, XXI and Law 8,666/93) and the peculiarities inherent to this type of service provision, is not new. There are countless difficulties and several different factors that contribute to increase insecurity when such contracts are signed.

The first point relates to the requirement to call for bids. Since the **duty to call for bids** is mandatory and selection based on the lowest price is the general rule, the problem arises from the immense difficulty of establishing appropriate selection criteria that will point with certainty to the most beneficial proposal. This greatly increases the risk of a contract being unsuccessful. Experience has shown that contracts of this nature, when bid upon, more often than not result in poor performance and in the objectives of the service not being met.

Another factor, which ends up sounding negative, is the variety of professionals and companies available in the teaching and training sector. The fact that there is a large variety of solutions in the market for a given training requirement makes correct understanding of issues like **sole source** and **recognized expertise** unclear. Therefore, one characteristic from this sector, which should be considered beneficial given this scenario, ends up making it more difficult to conduct proceedings. The Federal Court of Accounts precedent mentioned above was a milestone for addressing this problem which, despite the excellent work carried out by the Serzedelo Corrêa Institute, did not close out the debates. It raised a series of doubts for public servants working in this area regarding the practical aspects of this type of contract.

With the aim of shedding a bit more light on this subject, let us reinterpret the above-mentioned precedent, starting from its bases, in order to propose some pragmatic solutions that will clear settle this subject a little more.

2. NO-BID CONTRACTS, BASED ON ARTICLE 25, II: REQUIREMENTS AND SALIENT FEATURES

As it is known, in no-bid contracts the impossibility of holding a competition is the contributing factor that cancels out the General Duty to Bid, recorded in Article 37, XXI of the 1998 Federal Constitution. This impossibility always arises from the service to be hired itself, whether because it is sole source, as in cases of an exclusive product, or because,

even if it is not exclusive, it is incompatible with the notion of objectively comparing the proposals. It is precisely here that the hypothesis under analysis fits in. It is not a case where an administrator makes the selection, as in cases where bidding is not required (Article 24).

See the wording of the legislation:

> Article 25 – A bid process cannot be required when competition is not viable, especially: (...)
> II – for hiring technical services listed in Article 13 of this Law, of a sole source nature, with professionals or companies of recognized expertise, except for publicity and marketing services for which no-bid contracts are prohibited;
>
> Article 13 – For the purposes of this Law, specialized technical professional services are considered to be work related to:
> I - technical studies, planning processes and basic or executive projects;
> II – opinions, expertise inspections, and assessments in general;
> III – technical advising or consulting and financial or tax audits;
> IV – audit, oversight or management of construction or services;
> V – legal representation in legal proceedings or administrative procedures
> VI –training and capacity building for staff;
> VII – restoration of artwork or property of historical value.
> VIII – (Vetoed)

As can be seen, Article 25, II of the General Bidding Law acknowledges that certain services, i.e. "technical, specialized" ones, when they are "sole source", cannot be compared to each other, even when there is more than one solution and/or provider available. The above-mentioned Article 13 offers a list of services considered to be "technical, specialized" ones. The issue at the heart of this concept of non-bid contracts is the following: several capable providers may be available, but an objective comparison of their respective proposals is not viable. As Celso Antônio Bandeira de Mello teaches (2004, p. 497), "only (...) homogeneous, interchangeable, equivalent goods may be bid on. Unequal things are not bid upon. The characteristics of the service must be comparable and the items to be bid on must meet the Administration's requirements."

Uniqueness (sole source) is precisely the element that makes the service distinct or special. The fact of a service being described in Article 13 is not sufficient, because that in itself does not make it special (unique). In the performance of the service or in its intrinsic characteristics, there must be something that makes it uncommon. **Uniqueness** cannot be confused with exclusivity, originality or even rarity. If a service were a one-off or original, it would be a case for non-requirement due to a lack of competitors, based on the main clause in Article 25, and not due to its unique nature. The fact of the service only being offered by a few professionals or companies does not prevent these professionals or companies from competing against each other.

Despite there being opinions to the contrary[1], another concept that we consider incorrect is that uniqueness can arise from recognized expertise on the part of the provider. For this doctrinal line of thinking, recognized expertise would involve a subjective uniqueness. However, if we were to imagine that non-viability would arise from the contractor, we would have to accept the absurd idea that a given service would be at once unique and common, depending on the person that provides it. Now, a service either is or is not, unique. An architectural design for a low-income housing development, devoid of any complexity or cutting-edge technological solutions, cannot be classed as unique simply because the contract for it fell on the desk of Oscar Niemeyer. The design itself would still be common. In a very astute way, Jacoby (2011, p. 604), points out that the contracting process for construction and services necessarily begins with the definition of the purpose of the contract, involving the preparation of the basic and/or executive project, and not with the selection of a provider. He adds that "when regulation agencies begin their analysis by the characteristics of the project, one can notice how superfluous were the characteristics that made the project so unique, to the point of making competition non-viable."

However, in order for non-viability of competition to be characterized, the facts that the services included in the contract are listed in Article 13 and that it can be characterized as unique are not enough. Additionally, it is required that the service be provided by a professional or company that has recognized expertise. Only with these three requirements in place, in this order, will non-viability of competition be characterized. Doctrine and case law are not at odds with this assertion[2].

3. SERVICES FOR" TRAINING AND CAPACITY BUILDING FOR STAFF", FROM ARTICLE 13, VI, LAW 8,666/93

To begin with, it should be pointed out that it would not be reasonable to give a restrictive interpretation that would consider that Article 13, VI meant to limit the concept of specialized technical services to only training services; the concept must be extended to all educational services, at all levels. Therefore, whatever name is given to this service (training, advanced training, development, capacity building, teaching), it will be included in Clause IV of Article 13, Law 8,666/93. Included in this context is the direct hiring of teachers, instructors and speakers (individual person); contracts for continuing education courses (short or long term), internal undergraduate or graduate-level courses; registration in extension, undergraduate or graduate programs that are open to third parties, whether in person or via distance learning.

That said, there is no doubt that for these services, the first requirement for classification under the concept of non-requirement is met, as described in Clause VI of Article 13. The next step would be to determine in which cases such services possess qualities of uniqueness such that a bid process would be non-viable. For this examination it is necessary to perform an analysis around what the core features are for the concept of "training", since these features are precisely where distinctness would be defined, such that the service is classed as unique. After all, it is these features that will be used as the bases for measuring performance.

We call the core of the service the portion that gives it its identity, and that makes its execution concrete. The main requirement for any service is a "doing". In a cleaning service, for example, the core of the service rests on the action of cleaning itself (the "doing"). The methodology, the frequency, the equipment and supplies are just one part of the specifications, but they will not be responsible for the result achieved. It is only when the worker, applying the methodology, at the determined frequency, and using the equipment and supplies described in the Terms of Reference, carries out the cleaning that the service is said to be performed and that results can be measured. This is the core of the service of "cleaning". Whoever the professional or company, whatever the place of work, in whichever region it is performed in, with the methodology and other specifications implemented, the result will be identical or approximately so, and the objectives completely met. That is why it cannot be said that a cleaning service is unique in nature. The service allows for an objective comparison between several proposals. As a general rule, the same cannot be said for training services.

For training services, the general and specific objectives, target audience, methodology and course content represent the technical characteristics of the service, but they are definitely not the core of the service. The purpose of a training service only comes about with a **class** (the "doing"). It is through this activity that an instructor, making use of educational methodology and resources, and following the course content, carries out the purpose. Therefore, the core of the service is the class itself. Now, if it is the class, as a rule this service cannot be considered as usual, nor can it be considered that it can be performed in a standardized way; it cannot be said that any provider (or instructor), while using the resources mentioned above, will achieve the same results. After all, each instructor has their own technique, their own way of dealing with groups, their own empathy, teaching method, personal experiences, cadence and tone of voice, such that they cannot be compared to each other. Additionally, each group of students has their own characteristics that make them different from each other, which demand that the professional adapt their delivery each time they give the course. Indeed, the very instructor may carry out the service in a different way each time they deliver it, even if it is on the same topic, for example in the case of a change in the vision and concept of the course. That means that classes will always be different, whether in their delivery, their content, or in their method of presentation. It cannot be denied that each class (each service) is in itself unique, uncommon, and distinct. In this scenario, it is worth transcribing an excerpt from the document in question, quoting a lesson from Ivan Barbosa Rigolin, in a published article on Decree-Law 2,300/86:

> Expert Ivan Barbosa Rigolin, speaking about the legal classification of uniqueness applied by the legislation to training and capacity building of staff (...) held that: "The methodology used, the teaching system, the educational material and resources, the different instructors, the focus of the materials, the ideological slant, as well as all other fundamental issues related to the delivery of the service and its results- which in the end are what are important- none of this can be predetermined or deliberately selected by the contracting Administration." Therein lies the unmistakable brand of the provider

> of a unique service, who doesn't just carry out common projects, but who develops techniques that are all his or her own, and which can even change from project to project, and which can be continuously improving. (from Treinamento de Pessoal - Natureza da Contratação, in Boletim de Direito Administrativo - March 1993, pages 176/79)

The same is not true of training courses whose core service does not lie in the class, but rather in the method or educational material used. In these courses, the instructor's involvement is just an accessory, and is not a determining factor in the expected results. The methodology is what is responsible for these results being achieved. The courses within the "Kumon" methodology are an excellent example. This method calls for "individual study aiming to create self-teaching students using proprietary educational material for self-teaching, thus allowing the students to do their exercises **with a minimum of involvement by the instructor**..."[3] (bold added for emphasis). The core of the service, that is, its essence, is the method and the educational material used. In this case, the requirement of uniqueness is not there, since no matter who the instructor is, as long as they are trained for this role, on account of their minimal intervention, the results achieved will be uniform and predictable, since it is the method and the educational materials which are the main factors responsible for the results obtained.

In light of this, it is correct to state that, whenever the core of a training service is the **class** (the "doing"), the instructor's efforts will be the determining factor in achieving the desired results- i.e. therein lies the uniqueness of the service. In contrast, if the method is more important than the instructor's involvement, then the training is biddable. In can be seen that the logic around the general duty to hold a bid process (Article 37, XXI, Federal Constitution), in relation to these services is turned upside down, such that uniqueness is the general rule, insofar as almost all of the training activities are integrally dependent on the instructor's involvement. It is only in exceptional cases that a training program would have characteristics so distinct that it would require minimal involvement on the part of the instructor.

To clear up once and for all the confusion around the concept of uniqueness, let us consider that case of training courses that are not specialized or originally designed for the organization that contracted them. Here is a classic example: Official Portuguese Writing or Upgrading Course. With overwhelming frequency, the argument is heard wherein this course would not be unique in nature because "the subject is not complex and there are many Portuguese teachers on the market." Once more we must insist that uniqueness is not a synonym for exclusivity or rarity. It is not the number of professionals available that indicates the uniqueness of a service, but rather the examination of the core of the service, which, in the case of teaching, is the instructor. The conclusion that is reached is that, even if it is a course on a less specialized subject, and even if there are thousands of qualified instructors, if the involvement of the teacher is the determining factor in the desired results, the element of uniqueness will be there.

4. DEMONSTRATION OF RECOGNIZED EXPERTISE

Having discussed the first two requirements for the classification of non-viability of competition for a contract for training and capacity building for staff, we now move onto the final challenge: the issue of recognized expertise. The text from the legislation would seem sufficient to us to resolve any impasses, but in practice we have seen that this isn't always the case. At first glance, there exists a false idea that a recognized expert must be widely known, almost famous. See the legal text:

> Article 25 - *Omissis*
> (...)
> § 1° - A professional or company will be considered as having recognized expertise if their reputation in their field of specialization, resulting from previous performance, studies, experience, publications, organization, apparatus, technical equipment, or from other requirements related to their activities, allows for the inference that their work is essentially and indisputably the most suitable for the fulfillment of the contract.

A recognized expert is a professional (or company) who has earned a high level of respect and admiration from his or her peers, that is "... in their field of expertise..." based on their performance record, such that ... "it can be inferred that their work is essentially and indisputably the most suitable for the fulfillment of the contract."

This provision offers guidance around which attributes or requirements are considered the best ones for determining whether a professional is a recognized

expert or not, *i.e.*: "previous performance, studies, experience, publications, organization, apparatus, technical equipment...". There is more still. The expression "... or of other..." is a good indicator that the list of these requirements is an open one. Therefore, legislators accept that other concepts and requirements, not expressly written into the legislation, may serve as a basis for the conclusion that the professional selected is the most suitable one for the fulfillment of the contract. It can also be noted that listing the requirements is optional. That means that it is not required that they all be included in the justification for selection; it is enough to name one of them. If it is desired to contract for a presentation on Ethics in the Police Approach, designed for a police troop, a civil police officer with broad operational experience and a flawless reputation may be considered to be a **recognized expert** even if he or she does not have a university degree or has not published any papers. It is their background in the profession that allows for a positive prediction on the results that may be obtained from the presentation.

4.1 DISCRETION IN THE SELECTION OF A PROFESSIONAL OR COMPANY

When conceptualizing the term "recognized expertise", the legal provision concludes with the expression "allowing for the inference that their work is essentially and indisputably the most suitable for the fulfillment of the contract." There is no doubt that this selection will depend on a subjective analysis by the relevant authority in order for the contract to be signed. It could be no other way, since if the selection could be grounded on objective criteria, the bid process would not be viable. A bid process is not possible precisely because there is no way to perform an objective comparison between proposals.

Consequently, since the selection will be done based on a subjective evaluation, that is, based on the personal judgment of someone with the ability to make the selection, based on the sum of the information about the person who will deliver the service (experience, publications, previous performance, etc.), compared to this same information for the other possible providers, it is clear that the selection is essentially discretionary. It will be the relevant authority who will select the proponent that seems to them "indisputably the most suitable for the fulfillment of the contract", while respecting the range of principles followed in administrative activities (notably: legality, impersonality, abidance by public interest and reasonableness), and in addition, weighing the options available to them, based on their discretion. Once more we refer to the excerpt from the above-mentioned court ruling 439/98 from the TCU Plenary Session, which includes the brilliant lesson by the late Eros Roberto Grau:

> On Administration's prerogative of assessing the recognized expertise of the candidate, we once again refer to the teachings of Eros Roberto Grau, in the same work mentioned above: "... It shall be the duty of the Administration - that is, the public official responsible for this -to recommend the professional or company whose work is essentially and indisputably the most suitable for the project. It should be noted that while the regulatory text uses the present tense ("they are, essentially and indisputably the most suitable for the fulfillment of the purpose of the contract"), **here there is a prediction, which is based on nothing more than the requisite of trust**. There is a large margin for discretion here, even though the public agent, through their fulfillment of their duty to recommend, must consider the attributes of recognized expertise on the part of the party being hired." (Eros Roberto Grau, in *Licitação e Contrato Administrativo - Estudos sobre a Interpretação da Lei*, Malheiros, 1995, page 77) (bolded for emphasis)

This is identical to Celso Antônio Bandeira de Mello's position (2004, p. 507), in which, with his usual precision, he clarifies that:

> "It is therefore natural that in situations of this nature, the selection of a provider (to be necessarily selected from among the proponents) with recognized expertise in the area – falls to the professional or company whose performance gives the contracting party the conviction that, for the case at hand, they will presumably be *more suitable than that of others*, and giving the confidence that they will deliver the most suitable service for the case. There is therefore an illimitable component on the part of the contracting party."

4.2 WHO HAS THE RECOGNIZED KNOWLEDGE- THE INSTRUCTOR OR THE COMPANY?

Another practical question which often arises is the issue of identifying whether it is the company

or the individual to whom the recognized expertise belongs. In general, professionals (recognized experts) are rarely contracted directly as individuals, through a Receipt of Payment to Freelancer scheme (*Recibo de Pagamento a Autônomo* - RPA); rather, they are more commonly hired through event organization companies. This is done because of the availability of structure (airfare, lodging, meals), which would be paid for by the professional if he or she were hired as an individual. The question that arises is how to justify hiring a given company, while justifying the recognized expertise of the professional? The answer may lie in Article 25 of Law 8,666/93, in Clause III.

It has already been made clear that the non-requirement to hold a bid process discussed herein is based on the notion of it not being possible to objectively compare proposals since this depends on the personal evaluation criteria of the relevant agent (a discretionary act). Teleologically, it has the same origin as for the recognition of the non-viability of competition for contracting with professionals from the art sector. For this, Clause III of Article 25 authorizes contracting an artist not only directly, but also "*... through sole proprietorship...*". By way of analogy, the same solution could be offered for the hiring of instructors, if they are hired through event organization companies. In this situation, it should be acknowledged that the instructor would work through an intermediary, just as is common in the art world. I understand that the situation is more than analogous; it is almost identical. Not that the instructor that is hired would have to demonstrate that he or she works exclusively for a certain event organization company. That is because this almost never happens in the market. But, for a specific project, the subject of the contract, he or she would undoubtedly work in a relatively exclusive way, considering that, in general, each instructor/speaker usually works with more than one company or institution.

5. THE TCU'S CURRENT UNDERSTANDING ON THE SUBJECT

The above decision generated studies that culminated in Decision 439/1998, which was reported by Minister Adhemar Paladini Ghisi, and which was a watershed for the subject. The Court's Secretariat-General for External Control, the technical arm in charge of conducting studies, arrived at the conclusion that, in the vast majority of courses, the instructor's involvement is a determining factor for achieving the desired results, and suggested, in the end, as a proposal for a ruling, that the Court establish the understanding that "*... hiring of instructors, speakers, or teachers to deliver training or upgrading courses for courses for specialized public servants falls under the concept of non-requirement for a bid process laid out in Clause II of Article 25, in combination with Clause VI of Article 13, of Law 8,666/93...*". However, when this was done, it limited the understanding only to those trainings that are developed specifically for the contracting body, or for courses designed for the specificities of the students. Furthermore, it was also understood that it is completely possible to hold a bid process for cases of courses "*...based on conventional programs or directed towards non-specialized public servants...*", since it is understood that in these cases, there is no element of uniqueness.

Still, the understanding of the writer went even farther, pointing out that

> ... the non-requirement for a bid process in the current Brazilian setting, extends to all basic and advanced staff training courses... and that the non-requirement for a bid process for contracts for basic and advanced staff training courses, currently, is a general rule, with bidding being the exception.

With a unanimous vote at the Plenary Session, the TCU established the following understanding:

> The Full Session, in light of the reasons presented by the Writer, DECIDES: 1. to consider that contracts for instructors, speakers or teachers to deliver basic or advanced staff training courses, as well as registration of public servants for courses open to third parties, fall under the concept of no-requirement to hold a bid process set out in Clause II of Article 25, in combination with Clause VI of Article 13 of Law 8,666/93; 2. to remove the confidentiality of records, and order their publication in the Proceedings; and 3. to close the current case.

Despite the strength of the arguments given over the course of this extensive and brilliant vote, as well as of the illustrious masters mentioned in the report upon which it was based, I believe, with due respect, that the understanding needs the small reforms proposed herein.

As was said earlier, also sharing the understanding that for contracts for courses, the rule is non-requirement, and bidding is the exception,

it is thought that the reference point should be the degree of involvement of the instructor to achieve the desired results of the training. Recognizing the existence (as an exception) of courses whose teaching methodology makes the instructor's involvement less of a determining factor for achieving the results, it is considered that the decision by the distinguished Federal Court of Accounts cannot be generalized. Every procedure for contracting for courses will demand a correct legal framework from the relevant authority, with a demonstration of an unequivocal fulfillment of all legal requirements (explanation of the unique nature of the service, demonstration of recognized expertise and justification for the selection of the provider from among the possible alternatives.) The acknowledged generalization of the ruling in question, which presumably considers all courses to be unique, could lead to the fragility of the procedure in that the characterization of a service as unique could be considered unnecessary.

An adjustment is also considered necessary for registration of public servants in open courses, based on Article 25, II c/c 13, VI of Law 8,666/9. Indeed, competition is not viable since that event is specific and unique. There could be a course with the same content and the same instructor, by the same company, in the same city, but even still, each one will be unique. The various courses, even if they are identical, represent objectives which are only similar, and therefore distinct. It cannot be deemed that there are various interchangeable options. It is not convincing to argue that the course under consideration will be repeated over the course of the year, since they are events which cannot be compared. Proof of this is that it is not possible to ensure that an open course will be held, since it depends on a minimum number of registrants for it to be confirmed. Therefore, they can never be compared in a competition.

It is understood that bidding for open courses is not viable, since each one is unique. Of course, in many cases, an open course could also fall under the provision mentioned above, when it is offered by a recognized expert. But whether or not it is unique, and whether or not it is delivered by a recognized expert; for example, an open course delivered to third parties using the Kumon method, could not be bid on for the many reasons upheld herein. That is why the best solution for contracts of this nature is for them to fall under the scheme of non-requirement to hold a bid process based on Article 25, main clause.

6. CONCLUSION

In summary, we have reached the following conclusions: (a) for basic and advanced staff training, the determination of uniqueness is related to the core of the service, which is the **class**; (b) since the **class** is not a standardized activity and the various instructors cannot be compared to one another, whenever their involvement is a determining factor in achieving the desired results, the service will be unique; (c) as a rule, such services are unique, except those whose methodology is more important than the instructor for achieving the expected results; (d) for contracts for courses, the selection of the provider is a discretionary act and is the exclusive duty of the relevant authority, who must cite the reasons that led them to recommend one professional or company over another; (e) courses which are open to third parties are not eligible for bids due to their unique nature, which ends with their delivery; they must be contracted for based on Article 25, main clause, of the General Bidding Law.

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NOTES

1 In this sense: MEIRELLES, Hely Lopes, *Direito Administrativo Brasileiro*. 19ª.ed. Malheiros. São Paulo, 1994, p. 258; MUKAI, Toshio, *A natureza singular na contratação por notória especialização*, RJML de Licitações e Contratos, n.26, p. 13/15

2 See: TCU, Súmula 252; JUSTEN FILHO, Marçal, *Comentários à Lei de Licitações e Contratos Administrativos*. 14ª. ed. Dialética. São Paulo, 2010, p. 367; MELLO, Celso Antônio bandeira de, *Op. Cit*., p.508; DI PIETRO, Maria Sylvia Zanella, *Direito Administrativo*. 5ª. ed., Atlas. São Paulo, 1995, p. 273; CARVALHO FILHO, José dos Santos. 11ª ed. Lumen Juris. Rio de Janeiro, 2004, p. 226; JACOBY FERNANDES, Jorge Ulisses, *Op. Cit*. p. 605; MUKAI, Toshio, *Op. Cit*.

3 Available at www.kumon.com.br

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