



## **POLITICAL EFFECTS OF THE INCLUSION OF THE JOINT COMMITTEES IN THE PROCEDURE FOR THE ASSESSMENT OF PROVISIONAL MEASURES**

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### **1 Introduction**

Since March 2012, the proceedings of the provisional measures (MPs) in Congress have undergone a profound change, as a result of a judicial decision of the Federal Supreme Court in the scope of the Direct Action of Unconstitutionality - ADI 4029. At the time, the Court determined that before being voted by the House and Senate plenary, the MP must be evaluated by a mixed committee of deputies and senators.

The combination of the centrality of the provisional measures in the Executive's policies, the often controversial themes that it conveys, of its immediate validity in the legal world, of the certain deadlines, and of the compulsory appraisal by the joint committees, made these collegiate deputies and senators a new and important arena of debates and conflicts between government, opposition and interest groups. The smaller number of decision-makers and the specific regimental structuring are factors that make the political process in the commissions distinct from that seen in the plenary sessions.

The present work seeks to identify the political impacts resulting from the constitution of mixed committees to evaluate the provisional measures. There are several questions: does the inclusion of yet another decision-making arena in the process of dealing with a matter with a certain period of validity hamper the adoption of provisional measures? Did the dispersion of the decision-making process of a matter of capital value to the President impact Executive-Legislative relations? The entry of new actors and the pluralization of the process in the commissions increased the strength of the parliament?

As will be seen below, the special nature of these commissions made it possible to exercise certain powers and strategic advantages in the process of MPs, increasing the bargaining power of the Congress and, thus, affecting the Executive-Legislative relationship. This strengthening, coupled with the possible dispersal of the decision-making process, did not,

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however, mean the loss by the Executive in its ability to use the provisional measures as legislative instruments. The centralizing action of the leaders contributed to give stability to the new system of processing provisional measures.

The deadline for analysis will be March 2012 - when the STF decision began to take effect - until the end of 2014. This period of just over 2 years runs through the 54th Legislature of the National Congress and the first government of Dilma Rousseff. During the four years of government, the President of the Republic issued 145 provisional measures. Of these, 40 processed under the old system, where commissions were not installed and MPs followed directly to the plenary of the Chamber and Senate. The remaining 105 MPs, from MP 562 to MP 666, have already been processed following the STF determination.

Two factors must be taken into account in order for the analysis to be accurate. First of all, provisional measures that open extraordinary credit should be excluded, since these measures are sent to the Joint Budget Committee - CMO, a permanent committee that has its own characteristics and regulations. In addition, at the end of 2014, seven MPs had not yet completed their proceedings, and their analysis was carried out by the 55th Legislature, which began in 2015. After the exclusions, there remain 77 MPs that were appreciated by the mixed committees and were closed. As can be seen, this is a broad universe of analysis, which allows the extraction of important conclusions.

## **2 ADI 4029 and the change of procedures**

Since the enactment of Constitutional Amendment No. 32/2001, the Federal Constitution has explicitly provided, in its § 9, art. 62, on the need for an examination of provisional measures by a joint committee of Members and Senators. Subsequent to the approval of the Amendment, Resolution No. 1/2002-CN was the norm that came to govern said mixed committees. For each MP issued a specific mixed commission is constituted. However, MPs that open extraordinary credit are analyzed by the Joint Committee on Plans, Public Budgets and Inspection - CMO, permanent mixed commission.

Until the decision of the STF, the committees had a 14-day regimental term to settle, to elect the board and to approve the opinion. After the deadline, the provisional measure would automatically be sent to the Chamber of Deputies, where a deputy was appointed rapporteur to replace the joint committee. The same procedure took place in the Senate. During the more than ten years in which this system (2001-2012) was in force, only committees were set up for the consideration of MPs no. 182, 207 and 232. Even so, none of these boards was able to approve an opinion before sending MP the chamber.

The consolidated legislative dynamic was not to install the committees and transfer the appreciation of the MPs to the plenaries. After 14 days in committee, the MP proceeded to the plenary of the Chamber, where it remained the greater part of its period of validity, and then

proceeded to the Senate. The emptying of the mixed committees generated accommodation in the parliament, making the MP's assessment directly in plenary, where a true "empire of the rapporteur" was established. The plenary rapporteur had a great deal of control over the text to be voted upon, so that the negotiation of the text would no longer take place in parliament to take place in the ministerial offices, between the rapporteur, party leaders and government bureaucracy (CLÈVE, 2010; AMARAL JÚNIOR, 2004; FIGUEIREDO; LIMONGI, 1997).

The STF's decision in 2012 radically altered this praxis already established in the parliament. Since it is understood that the issuance of a prior opinion by the joint committees is a mandatory step in the constitutional legislative process, the STF, in the context of the Direct Unconstitutionality Action 4029, declared the unconstitutionality of several provisions of Resolution No. 1/2002-CN prohibiting the sending before the House's approval of the opinion by the Joint Committee. The decision ended, in practice, with the stipulation of the deadline for the committees to issue the opinion, at the time when it established the obligation of its manifestation before sending the matter to the plenary of the Chamber of Deputies.

The National Congress had an initial period of adaptation to the new practice. From one hour to the next, it had to set up and set up committees, and to mobilize parliamentarians for the meetings and to see that the provisional opinion was approved in time. MP # 562 was the first to process under the new system, and in just two months (April and May 2012), another 6 commissions were already in operation. By the end of the legislature, in 2014, 78 committees of MPs were installed.

### **3 The committees in the Brazilian Congress**

In order to carry out an analysis of the significance of the inclusion of commissions in the political equation for the approval of a provisional measure, it is necessary to make brief comments on the literature on commissions. Committees are divided body of the plenary working under specific jurisdictions, so as to provide division and specialization of the legislative process.

In the internal dynamics of parliament, committees can acquire powers and prerogatives to the detriment of the plenary, which can be classified as negative and positive. The negative power of the commissions would be to frustrate the will of the majority by maintaining the status quo or at least minimizing the impact of the intended change. It can be seen in two ways: the first is to bar the legislation that is sent to it, gatekeeping power, or "power to close the doors." If it is contrary to a particular project, the commission may retain it in committee indefinitely, without deliberation, preventing it from reaching the plenary. The second would be to limit the amendment of the plenary in its projects. In the US Congress, for example, it is possible that the commissions send projects to the plenary "under closed resolution", which in practice limits the possibility of amendment of the plenary. (DEERING; SMITH, 1997; LIMONGI, 1994).

But the positive power of the commission would be to alter the status quo according to its preferences, contrary to the interests of the plenary. This power is more limited, since the mechanisms that allow this imposition of the agenda are rare. In Brazil, positive power can be seen in the conclusion or termination of commissions, when the plenary deliberation is waived in certain matters. Even so, it should be emphasized that this power is partial, since recourse of a tenth of the composition of the House, according to constitutional command, can take the matter back to plenary.

The relationship of committees to the plenary and the strategic use of these negative and positive powers has sparked a whole literature on the role of committees, especially in the American Parliament, which is divided into three main perspectives. For the distributivist perspective, the process of choosing the members of the commission would be self-selective: parliamentarians choose the committees that best allow the attainment of their political interests, the main one of which is re-election. Committees would be made up of members with extreme preferences, who would tend to approve distributive measures, directing resources to their districts. The commission system allows for stability in this exchange of political interests (logrolling). Emphasizing the decentralization of decisions, this chain states that the committees can impose their preferences on the plenary (LIMONGI, 1994).

The other is informational, which is based on two assumptions: the first is that decisions taken by the legislature, plenary or committees are based on the will of the majority (a minority of heterogeneous preference can not impose its will on that of the plenary ); the second is that parliamentarians decide without knowing the results of the public policies they approve. In this sense, commissions are the institutions created to solve the problem of asymmetric information, making decisions are taken with as much information as possible, and respect the will of the majority. Contrary to the previous view, there is cooperation between plenary and committees, the first benefiting from the specialization of the second (SANTOS; ALMEIDA, 2005).

Finally, the party approach seeks to rescue an actor of vital importance in the political process, which is the party. In effect, parties interfere and have power to influence the political game within the plenary and also the committees. The composition of the commissions would not be self-selective, but controlled by party leaders, who indicate the party's most loyal parliamentarians. In addition, partisan leaders would have other powers that could subject committees to their interests, such as the choice of committee chairs and plenary agenda power, which increases their ability to direct the legislative process according to their interests. (COX; MCCUBBINS, 1993; MÜLLER, 2005).

Taking into account this theoretical instrument, and also the peculiarities of the Brazilian institutional design, there are several studies dealing with commissions in the Brazilian Congress. The current view is that committees would have a diminished role in the process of political

decisions by virtue of the powers of the leaders and the legislative prerogatives of the President of the Republic (FIGUEIREDO; LIMONGI, 1996; DINIZ, 1999; PEREIRA; MUELLER, 2004).

Pereira and Mueller (2000; 2004) start from this apparent emptying of the importance of commissions to understand what role they play in the decision-making system of the Chamber. Assuming the legislative powers of the President of the Republic, the centralization of the internal decisions of Congress in the hands of party leaders, and executive control of incomes and other political benefits (PEREIRA; MUELLER, 2004), the authors enunciate a "Theory of Executive Preponderance". Such a theoretical approach points out that committees would play a submissive role to the interests of the Executive and emphasize from an informational perspective that the main role of committees would be to reduce uncertainties when their preferences are similar to those of the plenary.

In fact, the negative power of the commissions, specifically the power of gatekeeping, perhaps the main bargaining arm of the commissions, is weakened in Brazil by the mechanisms of urgent requests. The President of the Republic can request urgency for projects of his own - the constitutional urgency -, and thus force the discussion in plenary, overtaking commissions. In addition, party leaders may also request urgency for certain matters - legislative urgency - and withdraw committee projects and bring them directly to plenary. The committees do not have full interference on the projects that are dispatched to them, and can not stop the processing of projects that do not have interest.

The committee also has no control over the projects it approves, since it can not limit the amendment in plenary and, in case of a final decision, one tenth of the composition of the House may appeal, bring the matter to the plenary and totally change the decision of the House. In addition, the committee does not have agenda power over the projects approved by it, since inclusion on the Agenda depends on the judgment of the Bureau. Finally, leaders and the Board of Directors may interfere in the work of the commission, either by nominating members or reviewing acts of presidents (DINIZ, 1999).

#### **4 Political effects of including committees in the assessment of MPs**

The theoretical approaches set out to analyze committees are important analytical tools and will be used to investigate the political effects of setting up joint committees to consider interim measures. Firstly, it is necessary to outline the formal delineation of these commissions, derived from the constitutional, regimental, and interpretation of the STF in ADI 4029. In this sense, the mixed committees of MP are: mixed committees, composed of deputies and senators in numerical equality; chaired and reported alternately by deputies and senators; constituted on a temporary basis, for the sole purpose of assessing only one subject; deal with a matter that has the force of law and has, in principle, a limited period of validity; lastly, they have the constitutional obligation to approve an instructive opinion of the MPs, but it has no fixed term to do so.

These characteristics are fundamental, since they put in check some ideas that have on the commissions in Brazil. The idea that committees are of minor importance in the legislative process and that they are subordinate to plenary bodies does not apply to committees for interim measures. Since the manifestation of these collegiate bodies is compulsory, no regimental mechanism is capable of removing the matter from the committee and taking it directly to the plenary, such as the urgency requirements.

The action of the President and party leaders, while still strong within the committees for interim measures, is not capable of eliminating the stage of the committee in the legislative procedure for the appraisal of provisional measures. The role of the commission in this case is not of minor importance; on the contrary, it appears to be an essential requirement for the adoption of interim measures.

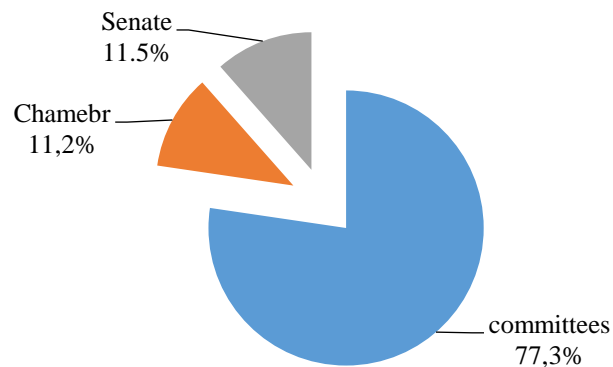
The compulsory constitution of the joint commissions to evaluate the provisional measures and the specific institutional framework of these collegiate associations have had diverse political consequences in the legislative dynamics. The prevalence of commissions to the detriment of plenaries in the decision-making process; the effective use of powers and prerogatives by commissions, informational gains and increasing distributive pressure are some of the possible effects arising from the new procedure for provisional measures.

#### 4.1 Prevalence of committees instead of plenary.

The old system for handling provisional measures had only two decision-making loci: the House plenary and the Senate plenary. Because of the prerogative of initiating the House, the Chamber concentrated almost all the time for the provisional measures (NICOLAU, 2009). This picture changed with the inclusion of commissions in the process of MPs.

Figure 1 below shows the proportional distribution of the time for processing provisional measures in the three arenas of analysis: committees, plenary of the Chamber and Senate plenary. In order to avoid skewing the averages, the provisional measures that were not valid in some of these bodies were disregarded.

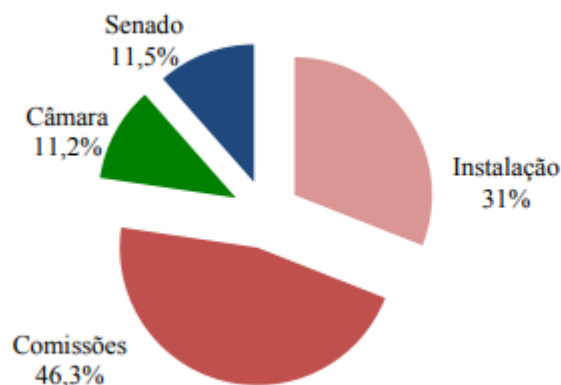
Graphic 1  
Distribution of the time for processing provisional measures ( % )  
(03/2012 - 12/2014)



Source: Chamber of Deputies and Federal Senate.

The average commission time was obtained taking into account the date of publication of the provisional measure and the date of approval of the opinion in the joint committee. However, between the designation of the members who will compose the commission and the actual installation of the collegiate, there is a sometimes high time, where party leaders close the right to distribute the positions of direction. If this time period is discounted, and only the actual time that the commissions had to analyze the provisional measure, then Chart 2 below.

Gráfico 2  
Distribuição do tempo de tramitação das medidas provisórias  
descontado o tempo de instalação (em %) (03/2012 - 12/2014)



Fonte: Câmara dos Deputados e Senado Federal

In both cases, the importance of the mixed committees in the political process of assessing the provisional measures is clear. The control of the process passed from the plenary to the committees, which, due to the lack of procedural deadlines, concentrate most of the time for the provisional measures.

#### 4.2 The power of gatekeeping

Since commissions are mandatory steps in the process of converting into law a provisional measure, there is no skillful mechanism to take the measure to plenary before the collegiate demonstrates. Unlike the standing committees, the power of gatekeeping can be exercised by the commissions of MPs, since these members can "close the doors" to the MP's proceeding by not approving their opinion. And there are several actors in the commission who can make use of this power: the committee chair, who does not schedule the meetings; the rapporteur, who procrastinates the presentation of his report; or the members, who do not give a quorum to the meetings or prevent the approval of the report with regimental resources.

There is one factor, however, that limits the exercise of that power by the commission. It is the ambivalent nature of the provisional measure, functioning both as a bill to be processed in Congress and as a law in force in the legal world. This feature changes the structure of the choices available to committee members. The decision to close or not the doors to the MP process is not a choice between maintaining the status quo and changing it from project approval, but between the status quo already changed by the provisional measure and a situation where the matter is rejected after it has already produced effects for some time. In short, the consequence of holding the provisional measure and exercising the "power to close the doors" will be the loss of validity of a rule that has already produced legal effects, which is not always desirable by the majority (LIMONGI, FIGUEIREDO, 1998).

In the period under review, ten provisional measures lost the term of validity in the respective commissions. It can be said that the deadline of MPs 643, 644, 645, 646 and 649 was due to the emptying of the National Congress in the electoral period in 2014, the so-called 'white recess', which made it impossible for meetings of such committees reached a quorum for the adoption of the opinion. As for the other 5 MPs, from Nos. 592, 599, 612, 629 and 653, these have expired in the respective commissions for the exercise of the veto of the abovementioned actors.

This is a relatively low number, slightly more than 5%, which can be explained by three factors: the high legal risk of barring the processing of a provisional measure, a rule that already produces legal effects; the political erosion for the members of the commission, who are 'held liable' for the loss of the provisional measure against the beneficiaries of the measure; and the control that the Executive exercises in the political process, through the partisan leaders of its



support base, ensuring that the measure is approved in the committee. In any case, gatekeeping power is a resource available to MPs commissions by virtue of their specific rulemaking.

#### 4.3 Limitation of plenary amendment.

A fundamental step in the legislative process is the amendment. In the Brazilian Legislative Houses, there are cases in which the process of amendment ends in the committees, so that the plenary can no longer present amendments. However, since there is no agenda for committees, the draft that they have amended and approved will not necessarily be debated in plenary. Thus, nothing prevents the plenary from "engavete" a project presented by a committee, a project that the plenary no longer has the capacity to amend, and present a new one in the place, according to his preferences.

In the committees for provisional measures, there is the possibility of limiting the amendment of the plenary and also ensuring that the measure is set out in the plenary sessions. By virtue of art. The deadline for submitting amendments is unique, occurring within six days of publication of the provisional measure in the Official Gazette of the Union. After this deadline, only the rapporteur, within the framework of the commissions, you can innovate and add other devices you deem appropriate. When MPs arrive at the plenary sessions, it is no longer possible to present amendments, and it is only possible to present highlights for a separate vote on the amendments already presented to the joint committee.

The single deadline for amendment is open to all parliamentarians, not just committee members. But this single amendment comes at a still premature stage in the proceedings for interim measures, when the effects of the measure have not yet been felt politically. As Amorim Neto and Tafner (2002) point out, Congress uses fire alarm mechanisms to monitor the practical effects of a PM by listening to the parties involved in the standard. Such monitoring requires time for measures to impact society and demands come to Congress. The single amendment in the sixth day of MP's effectiveness fails to capture all these effects, and therefore is a flawed and insufficient amendment.

Since it concentrates most of the time for processing the provisional measure, the committee is in a position to monitor the effects of the measure and thus improve the text. Although the members of the committee are subject to the same limitation of the other parliamentarians on the amendment, the rapporteur has the prerogative to present new amendments during the MP's consideration in the commission, and the only actor to be able to innovate after the single amendment period. The work of the committee, therefore, is not limited to the approval of an instructive opinion of the MP, but consists in presenting to the plenary a text that captures the demands of society after the MP has already had an effect for some time.

Thus, the commission has a prevalence in relation to the plenary regarding the amendment process. As there will be no further opportunity to amend the text of the provisional measure with

new amendments, the committee's opinion, which contains the amended text with the rapporteur's amendments, achieves unique importance in the PM's approval process.

#### 4.4 Power of bargaining and the strategic advantage of commissions.

Since there is no fixed deadline for the opinion to be adopted, committees can "choose" the appropriate time to send the provisional measure to the plenary. Of course, such dispatching depends on the composition of political agreements between the parties that allows the approval of the opinion by a majority of committee members. Even so, this strategic advantage that makes the commission detain the PM for most of its processing time can give it high bargaining power..

Suppose the following case (and it is not difficult to meet it in practice): the basis of the Government, which is a majority in the plenary, is in favor of the provisional measure of the way it was edited by the President of the Republic, but the commission amends the original text of the measure and approves an opinion with a number of distributivist amendments. In order to increase the likelihood that its text will be approved by the plenary, the committee 'holds' the MP as much as possible, sending it only at the end of the 120-day deadline. Given the scarce time for consideration, the Chamber's plenary can not assess which amendments should be kept and which ones should be withdrawn, or even if it makes such an assessment, it does not have the time to sew agreements with all parties in that sense. Thus, it is forced to approve the MP of the way it came from the commission, or with few possible changes. In the Senate plenary, the MP arrives within the limit of the validity period, and this House has no alternative but to approve the text as it came from the House, because if there is any change, the measure would still have to be assessed by the Chamber, and not there would be time for both.

This example reveals the bargaining power that the committees have for the simple fact of controlling the temporal element in the process of appraising the provisional measures. The tactic of "holding" the MP and "stretching the rope" of negotiation with the plenary gives the commission an advantage in imposing its text. This strategy has been used several times by committees. MP # 595/2012, the so-called "MP of Ports", reveals this mechanism. The measure profoundly altered the legal framework of the Brazilian port system, and its approval was vital for the political planning of the Executive.

MP 595 was issued by the President in December 2012, and the last day of the validity period was May 16, 2013. After holding 11 meetings, the committee approved the opinion only on April 24, withholding the provisional measure during 75% of its total time of 120 days of validity. The plenary of the House and the Senate would have less than a month to analyze a text modified by the commission, of 76 articles, dealing with an extremely complex and crucial subject for the country. The result was similar to the example given above.

To overcome obstacles to the approval of the measure, the Chamber met for 40 consecutive hours, approving the measure on the last day of the deadline, on May 16, 2013. The

emblematic voting session of the "MP of the Ports" entered into history of the Chamber of Deputies as the longest in the last 40 years of history. Upon reaching the Senate, senators had only two options: to approve the measure of how they came from the House or to reject it altogether, since the possibility of altering the text became innocuous in the face of temporal limitation. Under heavy criticism from the opposition, the Senate approved MP 595 also on May 16, 2013, the last day of the term.

The voting on this subject generated great political wear and tear in the Executive-Legislative coordination, but it was its internal repercussion that led to changes of procedure in the parliament. Facing the shortage of time to appreciate the MP, the plenary of the House and Senate found themselves hostages of the mixed commission that analyzed the measure. The obligation of prior assessment of MPs by mixed committees and the absence of a regimental deadline to do so in fact put the plenary in a delicate situation, always running against the time to appreciate MPs.

Faced with this fragility, the first to manifest was the Senate. At the same meeting that MP 595 was approved, that is to say, on May 16, 2013, the President of the House, Senator Renan Calheiros, signed the commitment, from then on, to no longer receive provisional measures of less than 7 days for the expiry of the period of validity. Furthermore, the Chamber also expressed its view on this, also with a view to securing a minimum period for the consideration of the provisional measure in plenary. At the meeting on September 9, 2013, the Mayor, Deputy Henrique Eduardo Alves, informed the plenary of the decision to no longer receive PM from the commission with a deadline of less than 15 business days validity.<sup>1</sup>

The decisions of the Presidents of the House and of the Senate expose an attempt of reaction to the concentration of powers in the mixed commissions. Thus, the absence of a procedural deadline for the assessment of the respective opinions in the mixed committees was provided by the internal deadlines established by each House, by decision of its Presidents. In all of this, however, it becomes more and more evident the bargaining power that the interim measures commissions reached by controlling the deadline for processing these propositions.

#### 4.5 Specialization of the discussions and information gains.

The need to be assessed in advance by a committee made the interim measures more debated, providing information to the plenary. This is unquestionable in view of the numerous meetings held by the committees, the holding of several public hearings, the discussion of the MP for a considerable time within the parliament, in three distinct arenas, in addition to the more transparent work of the rapporteurs.

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<sup>1</sup> Diary of the Chamber of Deputies, Year LXVIII, n. 156, September 10, 2013, p. 39405-39406.

In the previous system, where the committees did not meet and the assessment of the provisional measure was carried out directly in the plenary sessions, the discussion process was conducted almost unilaterally by the plenary rapporteur. Despite blocking the agenda from the 46th day of validity, the MP only had its discussion started when the rapporteur presented his text. Until that moment, the other parliamentarians were in inertia, just watching the rapporteur's negotiations with the ministries. The discussion in plenary, being an advanced and accelerated stage, could not provide parliamentarians with information appropriate to the votes. The information deficit in the analysis of MPs was only partially supplied through the mechanisms of "fire alarm" and the work of the technical advisors.

This situation has been drastically reversed by the setting up of the commissions for interim measures. Smaller decision-making arenas facilitated the work of collecting information on MPs, for example, from public hearings with subject matter experts. Since 2012, 56 public hearings have been held by the commissions on provisional measures, a figure that is not negligible compared to previous practice.

The democratic and transparent hearing of the sectors affected by a provisional measure has the power to provide new information to the actors involved in the decision-making process. Even if it is difficult to prove that the rapporteur and the committee actually used the information brought by the guests at public hearings, the fact is that public hearings formalize actors and arguments involved in the discussion of provisional measures. Thus, although the rapporteur's use of the information may have been minimal, publicizing the various points of view is in itself an informational gain for the parliament as a whole, since arguments previously brought only to the rapporteur's office have now become public, and may be consulted even in the plenary.

In addition to the various public hearings held, the information gain was obtained through a more in-depth discussion of the provisional measures within the committees, which had the active participation of the members. The work of the rapporteurs themselves has helped to minimize the asymmetries of information between the text of the MPs and their practical effects. Unlike the plenary rapporteurs, the committee rapporteurs have their work closely monitored by the other parliamentarians. As the committee consists of a much smaller decision-making arena than the plenary, its members are better able to assess and contest the work of the rapporteur.

Naturally, this political control causes the rapporteurs to carry out a detailed work in the preparation of their reports, since they will have to persuade their peers to approve the text in the committee and also in the two plenary sessions. Although some rapporteurs may conceal relevant information from other members, the discussion process in the committees generates a political exposition that requires explanations about the choices made in the report. The informational gains with the transfer of the decision-making process to the committees and the performance of the rapporteurs, therefore, overcome any manipulations of information.

#### 4.6 Self selection and increasing distributive pressure.

The place in a commission to analyze a provisional measure becomes a place of power and prestige within the parliament. Firstly, the importance of MPs within the Brazilian political system creates a favorable visibility for the political objectives of parliamentarians, who, acting in the committees, can reap the benefits of this exposition with their constituencies. In addition, participation in committees opens important channels of communication between the parliamentarian and government bodies, giving him access to the other decision-makers in the Executive. Finally, the assurance that MP will be determined and will have the commitment of the government for its approval makes it the object of any amendment, of parliamentarians who want their projects to "take a ride" in the urgent process of MP.

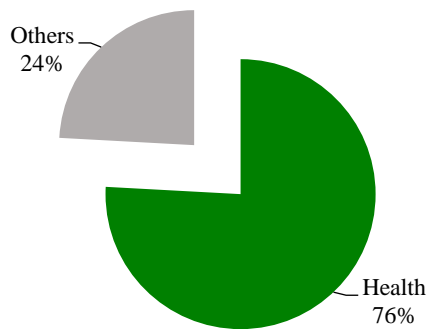
The adopted regimental model, of setting up ad hoc commissions for each provisional measure, allows parliamentarians to be accommodated according to their thematic preferences. Added to this is the fact that MPs deal with a wide range of subjects, such as financial, labor, social, agrarian, educational, etc. issues. This variety of themes and committees creates a wide space for parliamentarians to join the committees of their interests.

The process of appointing the members obeys the provisions of art. 2 of Resolution No. 1/2002-CN. After the provisional measure has been issued, it is up to party leaders to make the appointments of the members within a certain timeframe. If they do not do so, the President of Congress will make the appointment, preferably choosing party leaders and vice-leaders. But at any moment the leaders can replace the appointed parliamentarians and appoint others. In the end, the committees are composed in part of leaders and largely members of the subject of the provisional measure.

The case of two committees that were constituted in close dates and dealt with various provisional measures, those of nº 621 and 627, illustrative the form of composition of the commissions. MP 621 created the "More Medical Program" of the federal government, public policy of nodal importance for the administration of Dilma Rousseff. MP 627 profoundly altered the rules on federal tax legislation, impacting the performance of national companies. As we can see, they are diametrically opposite MPs, but edited in the near future.

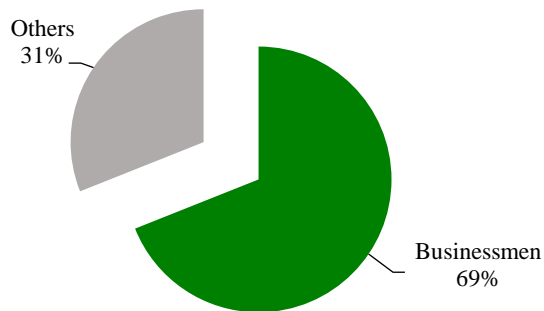
Analyzing the training area of the members of the Clearinghouse, members and alternates, at the voting date of the report, we have the distribution arranged in Charts 3 and 4 below:

Graphic 3  
Deputies' training area of MP 621



Source: Chamber of Deputies.

Graphic 4  
Deputie's training area of MP 627



Source: Chamber of Deputies

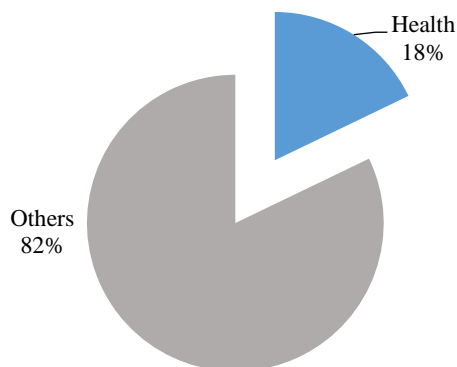
Regarding MP 621, all the members with training and acting in medicine, nursing and pharmacy were grouped in the category "Health", grouping in "Others" all others. Regarding MP 627, the "Business" category included representatives who declared themselves businessmen, traders, economists, administrators, and also lawyers, because the provisional measure deals with tax law issues.

It is apparent how the composition of both commissions has changed radically. Of the 30 deputies that compose the commission between incumbents and alternates, only one deputy was common to both committees. Therefore, a process of distribution of seats in the committees was carried out according to the areas of interest of the deputies. The overwhelming majority of

Members are familiar with the themes of the respective provisional measures, whether by the affinity of the area of training or performance.

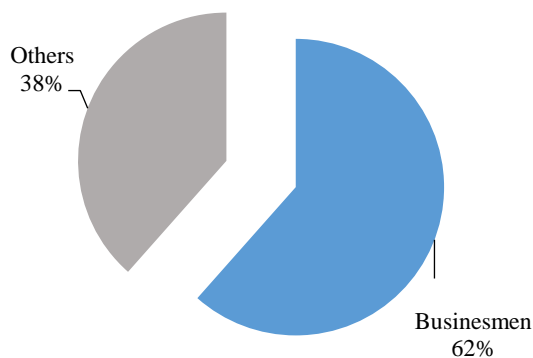
Graphs 5 and 6 show the distribution of parliamentarians in the same committees, but now in relation to the Senate. As can be seen, in the Senate the distribution of vacancies in these committees does not operate according to the areas of training and performance of senators:

Gráfico 5  
Area of formation of the senators of the MP 621



Source: Federal Senate.

Gráfico 6  
Area of formation of the senators of the MP 627



Source: Federal Senate

Other factors explain this differentiated pattern. While in the Chamber only one deputy joined the two committees, that number in the Senate rises to 15. In other words, the difference in composition from one commission to another is only 11 senators. In addition, the proportion of leaders and vice-leaders who make up the commissions is more than half the members. The composition of the members in the Senate did not change so much from one commission to

another, and the process privileged the party leaders. Obviously, since the Senate is a much smaller body than the House, it is to be expected that there will be a repetition of senators throughout the committees.

These examples, although isolated, point to general trends observed in the practice of mixed committees. The analysis of the composition of the members showed that in the House the criterion is followed by area of formation, whereas in the Senate the guiding criterion of the indication of the members is the exercise of the party leadership. The possibility of self-selection of members is then a feasible reality, especially in the Chamber of Deputies.

According to the distributivist approach, the self-selective process of commissions composition has the potential to increase the distributive pressures around the provisional measure. That is to say, because the commission is a locus of dispute of financial and political resources, parliamentarians linked to each other by affinity with a certain theme will fight for the distribution of these resources.

The indications of self-selection in the composition of committees for provisional measures may lead to an increase in distributivist pressure. Committees can use the arsenal of powers to assert their claims, in the form of distributive amendments, and thus achieve approval in plenary. Table 1 below shows traces of the validity of the hypothesis of increasing distributivist pressure. The table shows the total number of provisional measures approved and the total number of devices vetoed before and after the decision of the STF in ADI 4029, with the respective mean values.

**Table 1** - Ratio of vetoed and MPs approved devices.

	<b>Before the STF decision</b> (01/2011-02/2012)	<b>After the decision of the STF</b> (03/2012-12/2014)
MPs approved.	28	55
Vetoed devices.	38	380
<b>Average</b>	<b>1,35</b>	<b>6,9</b>

Source: Presidency of the Republic

The increase in the number of vetoed devices indicates a greater confrontation between the political preferences of the Executive and the Legislative. In the system of procedure without the mixed committees there was a reduced number of vetoes, revealing a more harmonious coordination between Executive and Legislative regarding the approval of the text of the provisional measure. Already in the current model, the number of vetoes underwent a great leap.

This increase can be attributed to other variables, such as the political and economic momentum and the erosion of the government's relationship with its parliamentary base, but certainly the change in the procedure of the MPs has contributed to weakening the Executive's relationship with Congress. The data, then, suggest an increase in the distributive pressure that



had to be barred by the President of the Republic by the veto - and the vetoes still do not capture the other many devices in which the Executive had to yield to the parliament.

#### 4.7 Process control by party leaders.

Despite the complexity of the decision-making process after the inclusion of mixed committees, the high level of approval indicates that political control remained more or less stable. The individual performance of parliamentarians increased, giving them greater capacity to influence the process, and the constitution of several committees dispersed the process of appreciation of provisional measures, but the political activity of the leaders represented an important restraint to the centrifugal forces of the decision-making process.

It has been established in the literature the perception that the decision-making process within the Congress would be highly centralized in the hands of party leaders. Institutional design and unequal distribution of legislative resources tend to privilege leaders in the legislative process. This pattern of centralization was also observed in the new system of interim measures commissions. Regimental interpretations and consolidated practices, among other mechanisms, gave party leaders high powers in the process of MPs. The art. 88 of the Rules of Procedure of the Senate, for example, stipulates that the election for the election of the posts of chairmanship of the commission be done in secret ballot, and that rule is what determines the process of choice in the joint committees of provisional measures. The secret ballot incites direct confrontation in the vote and allows the launch of candidacies that contradict the government.

However, what is observed in the installation of the 77 committees is that in none of them the choice of positions was by election in the vote, contrary to the regimental device. On the contrary, the established practice was as follows: partisan leaders indicated certain parliamentarians to hold office in committees, and these were then acclaimed by collegiate bodies, rendering the voting process unnecessary. The actions of the leaders, therefore, centralized the process of choosing the positions, preventing the individual parliamentarians from launching single candidacies or opposing the indicated names. It is significant that in all the commissions the process has taken place in this way, notwithstanding the regimental rule to determine diverse procedure.

And not only was the control of the process of choosing the positions held by the party leaders, but the presidential offices were all controlled by the executive. Table 1 below shows absolute government control over the 77 interim relief commissions. With only two exceptions, MPs no. 587 and 593, which were led by the PSDB, all other 75 committees had parliamentarians from the government base as presidents. The presidencies of the Chamber are designated by the initials of the parties. (PT / PDT / PSB / PCdoB / PSOL), "Government" indicates the Block of Support to the Government (PT / PDT / PSB / PCdoB / PSOL) and "União e Força" (Union and

Force) indicates the Union and force Block (PTB / PR / PSC / PRB), all integrating the support base for the federal government.

**Frame 1** - Presidencies of the committees on provisional measures by party / parliamentary bloc.

MP	Presid.	MP	Presid.	MP	Presid.	MP	Presid.	MP	Presid.	MP	Presid.	MP	Presid.	MP	Presid.
562	Maioria	576	Maioria	587	PSDB	600	Governo	612	Maioria	627	Governo	638	União e Força	649	Governo
563	PT	577	PT	589	PT	601	PT	613	PMDB	628	PT	639	PMDB	650	PMDB
564	Governo	578	Governo	590	Governo	602	Maioria	614	Governo	629	Maioria	640	Governo	651	Maioria
565	PP	579	PT	591	PMDB	603	PT	615	PMDB	630	PMDB	641	PT	652	PT
567	Maioria	580	União e Força	592	Maioria	605	Maioria	617	Maioria	631	Governo	643	Maioria	653	Governo
568	PT	581	PMDB	593	PSDB	606	PMDB	618	PT	632	PMDB	644	PMDB	656	PT
570	Maioria	582	Governo	594	Maioria	607	União e Força	619	Governo	633	Maioria	645	Governo	657	Governo
571	PT	584	PMDB	595	PT	608	PT	620	PMDB	634	PT	646	PT		
574	Governo	585	União e Força	597	Maioria	609	Governo	621	Maioria	635	Governo	647	Maioria		
575	PT	586	PT	599	PMDB	610	PT	623	PT	636	PMDB	648	PMDB		

Source: Federal Senate and House of Representatives.

Controlling the commission according to partisan interests gives another perspective to the self-selection of committee members according to their preferences. The accommodation of the parliamentarians in the committees of their interest produces distributive pressures, but that are softened by the partisan control of the collegiate ones. This is a political calculation that pleases both the bench, by nominating parliamentarians to committees according to their preferences, and by leaders, by maintaining political control over committees.

Another factor that reinforced the "centralization" of the leaders in the dispersed decision-making process of the commissions was the assiduous and firm performance of the leader of the government in the National Congress, Senator José Pimentel. Contrary to a regimental norm, which states that the process of installing the commission must be conducted by the senior parliamentarian until the election of the president, the leader of the government has given this task to himself. In this way, he was able to guide the process according to the designs of the government and party leaders, avoiding the risks arising from the discontinuity between one commission and another. Its performance also allowed to establish understandings and interpretations regimental and to consolidate a jurisprudence throughout all the commissions, minimizing the effects of the dispersion of the decision-making process.

Finally, there was a notable concentration of legislative resources in the hands of party leaders. Deciding on a point of order raised in joint session on December 12, 2012, the presidency of Congress stated that the Common Regiment applies to mixed committees, thus guaranteeing the prerogatives of the leaders. This understanding has generated some distortions. For example,

the possibility of submitting stand-alone voting requirements, separate amendments, or specific sections of the report was restricted to leaders. A member of the committee who takes part in the discussions throughout the proceedings of the provisional measure in the committee does not have the prerogative to submit a request for a stand-out, while any leader in the House or Senate may do so.

Another important legislative feature is the request for quorum verification, an instrument widely used to obstruct voting, when a nominal vote is repeated by the symbolic process. This is another unique feature of party leaders to the detriment of committee members. While on the one hand the large number of leaders has the potential to cause decision paralysis, on the other hand it makes it easier to form agreements, which do not need to address the interests of all parliamentarians.

## 5 Conclusions

The STF's decision in 2012, ADI 4029, altered the practice established in Congress to push plenary all the decision-making process regarding provisional measures. The inclusion of mixed committees in the MP evaluation process has had political effects, including in the Executive-Legislative relationship. The incorporation of another arena of debates in the process of MPs - a matter of key importance for Brazilian presidentialism - affected the behavior of the actors and demanded a rearrangement of the political forces within the parliament.

On the one hand, the mixed committees represented an improvement in the decision-making process in Congress, since they allowed for greater debate and informational gains. The greater transparency of the decision-making process, the more active participation of other actors, the holding of debates and public hearings within collegiate minors, and the more exposed performance of the rapporteurs were all factors contributing to the reduction of uncertainties and information gains in the consideration of the MPs in plenary. It migrated from the old model, from the "empire of the plenary rapporteur", to a more open and democratic system, which strengthened parliament as a decision-making body.

On the other hand, the institutional design of the commissions of provisional measures has given these collegiate powers some special powers, not available to other committees of the parliament. The full possibility of exercising the power of gatekeeping; the limitation of the plenary amendment; and the strategic advantage of the committees in relation to the plenary, which control the temporal element of the procedure and therefore increase their bargaining power, are some of the prerogatives that make of the provisional measures commissions singular organs of the whole Congress.

The full exercise of those powers would have the potential of stagnating the procedure for the assessment of provisional measures. Did Congress take advantage of this procedural change to impose itself on the Executive and reject or fail to approve the provisional measures

that constantly block the voting list? The numbers indicated do not. As seen, in the period under review, only 5 provisional measures have lost effectiveness, in a universe of 77, which can be explained by the immediate validity of the provisional measure, which often makes its revocation unwanted due to legal uncertainty.

Since the process of assessing provisional measures did not paralyze the new system, another possibility is that parliamentarians have used the powers of mixed committees to approve distributive amendments, thus impacting on the Executive-Legislative relationship. It points to the hypothesis that the process of commission composition would be self-selective, contributing to the increase of the distributive pressure.

The explosive increase in the vetoed provisional measures after the STF decision is another corroborating evidence. Although the vetoes may reflect other variables of the political equation, such as the relationship of the Government with its base, it is certain that the provisional measure constitutes the principal legislative instrument at the disposal of the President, and that changes in the form of appreciation of that instrument certainly impact on the Executive-Legislative.

The result of these two effects - increased commissions and increased distributive pressure - is the considerable increase in the cost of approving these matters for the government. Three elements demonstrate this increase: the dispersion of the decision-making process, the difficulty of mobilizing parliamentarians for voting and the multiplication of veto points.

The dispersal of the decision-making process became evident with the incorporation of yet another arena into the political process. And as for each provisional measure a specific commission is created, it is not strictly a question of another decision arena, but of several other arenas, as many as the number of MPs edited. This pulverization hinders the control of the process by the government due to the discontinuity between a commission and another.

There are still practical difficulties, since the government must mobilize its support base in Congress to give a quorum at meetings of all these committees. This means a herculean effort to bring parliamentarians to the meeting sites. With the rapid dynamics of political activity, the quorum question is a significant problem. The fact that they are mixed committees further aggravates the issue, since the distinct agenda of activities between the House and Senate must be reconciled to find suitable dates and times for the participation of deputies and senators.

The increase in the cost of approving the provisional measures for the government can be seen, finally, in the multiplication of the veto points. However, the regimental rules governing mixed committees give various powers to party leaders, facilitating mechanisms of parliamentary obstruction. For example, all partisan leaders in the Senate and House have the prerogatives of committees to ask for nominal verification of votes and to present stand-alone requirements for separate voting on excerpts from the report. These are resources that virtually prevent the vote on any provisional measure. The multiplication of the veto points thus made the approval of the

provisional measures in the commissions a battle for consensus among the parties, obviously also contributing to increase the cost of approval of the matter.

While all these effects have increased the costs of approving the provisional measures for the government, the fact is that the approval rating has remained quite high. As seen, only 5 MPs, in a universe of 77, have lost their effectiveness due to the active performance of the commissions. What, then, would be the explanation for this phenomenon? The answer lies in the concentration of powers in the hands of party leaders, allowing some stability in the political conduct of the process of appraisal of provisional measures.

Whether it is for the control of presidential positions, for the incisive performance of the Government leader in all committees, or for the unequal distribution of important legislative resources, the fact is that the greater individual participation of the parliamentarians and the exercise of the powers of the commissions found clear barriers in the figures of the leaders. In addition, given the immediate effects of MPs, it is more advantageous for leaders to plead for the inclusion of distributive amendments than to frustrate MP approval. In spite of the dispersion of the decision-making process with the constitution of the mixed committees in the process of the MPs, the performance of the party leaders managed to maintain relative control over the process, allowing some stability in the decision-making process.

Much more than fitting the MP commissions phenomenon into one or another commissions approach, this article sought to evaluate the new procedure by making use of all the available theoretical tools, which is not exclusive. The result is that the inclusion of mixed committees in the approval process of the MPs, after the decision of the STF in 2012, brought informational gains, but considerably increased the cost of approving these matters for the government. However, the concentration of powers in the hands of partisan leaders has limited the centrifugal effects of the decision-making process, allowing some stability in the process and avoiding decision paralysis.

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