



PARLIAMENTARY BUDGET OVERSIGHT: BRAZILIAN EXPERIENCE IN PUBLIC WORKS

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Abstract: The paper focuses on the budget oversight activities by the Brazilian National Congress regarding public works who show evidence of severe irregularities. It presents the main descriptive features and the most relevant hypotheses in the literature on legislative studies who might apply to legislators' behavior in this field. Those hypotheses are tested by means of a quantitative map to the legislative decision-making pattern in this matter (budget impoundments) during the 2002-2020 period, using as criteria for assessment the convergence with the Court of Account's recommendations towards each work project. It then concludes by stressing that the legislative decision-making profile shows heterogeneous patterns, which require more complex, multi-factor models to be understood, models in which different incentives affect different parliamentary groups within the corresponding decision framework.

Keywords: Congressional Oversight; Public Budgeting; Public Works; Irregularities In Public Works.

1 Introduction

For over two decades, the Brazilian Congress has exercised intense control activity through the resolutions in the budget law on irregularities pointed out in federal public works, which has merited little attention from the literature² and opens a broad possibility for research in the field of legislative studies.

This text aims to present a descriptive synthesis of the functioning of this parliamentary control modality, followed by the discussion of the possible theoretical approaches applicable to this theme and an empirical study on some observable implications of such approaches, besides the indication of the main directions in which the agenda of research on the theme may advance. As a specific research problem, it assesses the convergence of the practice followed by the Brazilian Congress with the expectations of legislative studies relative to the inspection activities of parliament initiative, in light of the legislative organization and parliamentary motivation theories.

Section 2 describes the main characteristics of the budget inspection process that is the subject matter of this work. After, Section 3 describes the observable implications of the

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² The few located works that have as subject matter the mechanism of blocking irregular works stem from research by authors who participated in some of their steps and seek to assess their results in terms of efficacy or convenience (MACHADO FILHO, 2008; ALVES, 2016; SILVA, 2011; SILVA JUNIOR; RIBEIRO; BITTENCOURT, 2009a; MATTOS *et al.*, 2009) or merely mention them, as additional components, in more general reasonings about the functioning of the government control and inspection system in Brazil (SPECK, 2000; OLIVIERI, 2016; GOMIDE; PEREIRA, 2018).

theories of legislative studies regarding an activity such as the one examined herein. The empirical research is reflected in Sections 4 and 5, which respectively describe the methodological aspects and results of the study of parliamentary action, comparing the findings with the expectations outlined in Section 3. The last section synthesizes the conclusions of the assessment and points out the implications of the results obtained herein for a future research agenda on parliamentary control and inspection through the budget.

2. Budget control of public works

The mechanism analyzed herein is standardized by the text of the federal budget directives laws (BDLs) each year³. It has, in its current form⁴, the following main characteristics: The Brazilian Federal Accounting Court (TCU) inspects, over the fiscal year, a set of expenditures and contracts funded by the federal budget⁵ and refers to the Joint Commission of Plans, Public Budgets, and Inspection of the Brazilian Congress (CMO) a global report of the results of such inspections, pointing out in it the cases that merit a recommendation for the suspension or blocking of the physical, budgetary, or financial execution due to indications of serious irregularities. This recommendation stems from indications that are materially relevant relative to the total value of the work or service considered that might cause harm to the public treasury or third parties, give rise to the nullity of a bid or contract, or represent a serious deviation from the constitutional principles of the public administration. Starting from this list of recommendations⁶, the CMO resolves on the budget authorization for the execution of expenditures (including the amounts owed) with such objects in the annual budget law: upon registering all or part of such objects in a chart attached to the Annual Budget Law, it renders automatically blocked the execution of expenditures with them in the fiscal year to which the law refers until a later decision by the same CMO (at any time during the same fiscal year) authorizes the lifting of this restriction through a legislative decree.

The formal competence for this final decision is of the plenum of the Brazilian Congress, but the approval by the CMO has a terminative nature and may only be revised by the plenum of the Congress upon an appeal subscribed by one-tenth of the composition of the CMO⁷, which represents a strong decision-making dominance of the Commission⁸. Internally,

³ Its most recent version corresponds to article 9, §2, and articles 137 through 145 of the Budget Directives Law of 2021 (Law No. 14116 of December 31, 2020, available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/L14116.htm).

⁴ This procedure results from a broad historical evolution initiated in 1995 (when the first initiatives in this direction were included in the budget directives law) and gradually refined, year by year, until reaching the current setting. For a presentation of the historical evolution of the mechanism, see BRAZILIAN CONGRESS (2004), BRAZILIAN FEDERAL ACCOUNTING COURT (2016), MACHADO FILHO (2008), and BROWN et al. (2008).

⁵ Generally covering public works, although there are no restrictions on expanding this inspection universe to other types of expenditures or contracts.

⁶ Although any other objects deemed necessary by its own verifications may be added.

⁷ Article 123 of Brazilian Congress Resolution No. 1 of 2006:

⁸ With effect, no modifications made by the plenum of the Congress to any decision adopted by the CMO on the

the CMO delegates the reporting on the subject matter to an internal collegiate. Currently, it is a standing committee dedicated only to examining this theme, denominated Committee for the Assessment of Information on Works and Services with Indications of Serious Irregularities (COI)⁹. In any case, the resolution of the CMO has no legal effect on the verification and the decisions by the TCU on the merits of the subject matter.

This mechanism had a large impact, at least in some relevant episodes: a large number of works had their executions effectively blocked by a few years (which will be seen in numbers ahead), and this protagonism raised public reactions on the part of the federal leaders and construction businesspeople (JUNQUEIRA, 2009; MATTOS et al., 2009) at times confused (deliberately or not) with more comprehensive criticism to the entire functioning of the control institutions (CRUZ; AMORA, 2011; SASSINE, 2013; on this global impact, see SILVA JUNIOR; RIBEIRO; BITTENCOURT, 2009a). In 2009, for example, the blocking action affected works that were later revealed to be sources of losses and illegal payments detected by the *Castelo de Areia* and *Lava-Jato* operations, such as the contracts in the REPAR, Abreu e Lima, and Comperj refineries (NETTO, 2016, pp. 72, 86, 110-111; GASPAR, 2020, pp. 246, 279-280, 358-360, 362; PADUAN, 2016, p. 313). In the latter case, the blocking decision was supplanted by a presidential veto not overruled afterward by the plenum of the Congress (RIBEIRO et al., 2010), but, even so, the control action imposed a strong political burden on the Executive Branch upon forcing it to assume an explicit position on the responsibility for the works (CARVALHO, 2009; 2009a). In synthesis, the procedure showed that it works if and when it comes to be exercised.

3. Budget control and parliamentary behavior

Control through the denial of budget authorization for initiatives and expenditures is considered by the literature as typical of the Westminster paradigm of the institutional systems of horizontal accountability: that which has the parliament as the center of the control activity, limiting the other inspection entities to reporting their findings to the legislators and the public. With the Brazilian setting being quite characteristic of the "Napoleonic" system, in which the roles of direct inspection of governmental action are concentrated on an organization with almost judicial powers to investigate and punish, there would be little theoretical expectation on the active functioning of a control mechanism anchored on the budget (BITTENCOURT, 2009, pp. 14-21).

Indeed, the literature on parliamentary behavior discusses the scarce incentives for the parliament member performing the role of controller of the administration in the name of collective interest, with it being more attractive to them to assume the role of representative of

subject matter were identified in the period examined.
9 Article 23 of Brazilian Congress Resolution No. 1 of 2006.

segmented interests (sectoral, regional) in search of advantages to be extracted from the common public fund (BITTENCOURT, 2009, pp. 15-16; for the Brazilian case, see OLIVIERI, 2016, p. 22; ABRANCHES, 2018, pp. 2079 and 4906). For this reason, there is little theoretical expectation of engagement of the parliamentary institution as a whole in a control activity¹⁰.

In another perspective, the budget inspection mechanism described herein has the typical profile of a police patrol (parliamentary control activity that is centralized, active, direct, and by their own initiative - MCCUBBINS; SCHWARTZ, 1984, p. 166). Now, police patrol has been considered ever less exercised by parliaments, gradually replaced by the more diffuse universe of the fire alarm, in which the role of the Legislative Branch would be that of designing a system of formal and practical rules through which citizens and interest groups have the capacity and interest to examine the executive activities for themselves and activate alert and contestation mechanisms before other specific agencies, the Congress, or the Judiciary Branch (MCCUBBINS; SCHWARTZ, 1984; LUPIA; MCCUBBINS, 1994; for the Brazilian case specifically, see FIGUEIREDO, 2001, pp. 715-716). The theoretical expectation for a control activity would, thus, pend in the opposite direction, that of disbanding a proactive police patrol action in favor of the creation of disseminated mechanisms for collecting complaints or other forms of pulverized input on hypothetical irregularities.

In the Brazilian coalition presidential system, in particular, the literature converges to two predominant views on the dynamic of the formation of majority coalitions in the parliament, which would be the key to the presidential capacity to implement their agenda of policies (and, therefore, the strategy par excellence of the presidents)¹¹. In the first perspective, the coalitions are a game of exchanges starring a president who, despite having strong formal powers in the legislative sphere, has the necessity and objective of obtaining votes in favor of their agenda of national policies and a parliament whose main objective is to obtain sectoral or local advantages of individual interest of legislators or specific caucuses, advantages that materialized in localized expenditures (pork barrel) inserted into the budget, as well as in the control of ministerial or lower-level posts in the executive branch by the parties and legislators engaged in the game.¹² The second perspective sees in the formation of coalitions a cross-

¹⁰ Even a rare approach that emphasizes the potential political gain of an incisive control by the parliamentary institution (KRINER; SCHICKLER, 2016) proposes that the instruments by excellence for this would be public hearings and commissions of investigation.

¹¹ For a full characterization of this disjunctive in the literature, see Bittencourt (2019, chapter 2, pp. 25-60). An earlier version, more simplified, may be found in Bittencourt (2012).

¹² For a defense of this approach in the contemporary Brazilian scenario, see Abranches, 2018 (pp. 7548-7561 and 7811-7819). Besides these factors, Chaisty, Cheeseman, and Power (2018) include the power of command of the president in their own party and "informal" mechanisms of exchange of favors. Moreover, the negotiation structure between the Presidency and the Legislative Branch is postulated at times as fragmented between the president and each individual parliament member and, by other authors, as being centralized in the partisan leaders in Congress, which would provide stability and credibility to the bargains (AMES, 2011, and FIGUEIREDO; LIMONGI, 1999, are the classical spokespeople of each of these approaches). Regardless of what the interlocution channels are or of taking into account other additional transaction instruments, the reasoning formulated in this text about the role of budget expenditures does not change.

sectional division of the State through which the distribution of ministerial posts implicates the virtual delegation, by the president, of entire areas of public policy to specific parties or groups, which will implicate the sharing of the benefits and the burden of their implementation with these parties or groups. However, any of these approaches will have a central axis of implementation in the definition of the budget allocations: it is incumbent upon the budget to materialize the delivery of pork goods to the parliament members (in a pork-for-policy transaction under the terms of the first view) and to guarantee the execution of a relevant part of the policies of which the coalition partners are co-formulators and defenders (according to the second tradition)¹³. However, in any case, the parliamentary interest (be it individual, be it collective) would see itself met by the execution of the budget disbursements - in other words, with the budget expenditures being the materialization of the interest of the individual parliament member (or their caucus or party) in the game of governability, it is not expected for these same parliament members to have incentives to act more rigorously than any other institutional instance in the face of the detection of possible irregularities¹⁴.

One may consider the possibility of reputational gains by some parliament members due to a proactive role in combating corruption and waste¹⁵. In a broader sense, the destabilizing impact on the political system (and, therefore, on the direct interests of the occupants of political posts and their parties in the maintenance of the status quo) stemming from the effects of corruption scandals has been pointed out as a relevant factor in Latin American politics, especially relative to the chiefs of the Executive Branch and their popularity (PÉREZ-LIÑÁN, 2009, pp. 113-214¹⁶), but also indirectly capable of influencing stances in the Legislative Branch (PRAÇA, 2009, pp. 123-158).

Without discarding this possibility, one may perceive in the literature on the Brazilian case that directly addresses the issue of irregularities or corruption in the budget an emphasis in the opposite direction: according to these authors, one of the most relevant factors for parliamentary interest in each given budget release would be the opportunity to obtain illegal advantages, be it directly or in the form of campaign financing (LIMA; MIRANDA, 2006, p. 344; SAMUELS, 2002; BEZERRA, 1999, pp. 244-252; SPECK, 2008, pp. 135-136;

¹³ In an approach of the distributive politics of coalitions, which considers the two perspectives as theoretically aligned, Meireles (2019) also reiterates that the key that associates participation in the coalition and the interest of the potential partners in the Legislative Branch (in this case, the parties) is the control over the budget of the divisions.

¹⁴ Or, in a less parsimonious formulation, is any behavior is theoretically expected of the parliament members, it is the opposite, i.e., greater leniency with the disbursement of the programs, leaving considerations of formal or material regularity of the expenditure for posterior verification by other control institutions.

¹⁵ This point was suggested in part by Kriner and Schickler (2016), although their reasoning depends greatly on the North-American bipartisan dynamic in which an aggressive control almost automatically generates reputational losses to the incumbent party in the Executive Branch directly appropriable by the opposing party.

¹⁶ Nevertheless, in a later work, the same authors relativized this protagonism of the reaction to corruption and came to attribute the popular pressures that generate political instability fundamentally to crises of economic nature and the more or less radicalized profile of the preexisting political system (PÉREZ-LIÑÁN; POLGA-HECIMOVIČ, 2016).

ABRANCHES, 2018, pp. 5437 and 7357¹⁷). Therefore, the unfolding of this reasoning will be a strong incentive for the parliament members (or a non-negligible number of them) to fight for the continuity of the disbursements, including (or especially) of those undertakings or objects that present irregularities of which they are potential direct or indirect beneficiaries. There are, indeed, sparse mentions in the press and evaluative surveys to a tendency of the CMO to reject the recommendations for suspension by the TCU merely due to political convenience (CAMAROTTO, 2014; LIMA, 2015; OLIVIERI, 2016, p. 27)

This entire brief theoretical review points to some observable implications of great importance, common to several of these approaches. On the one hand, one would expect from the traditional approaches not a strengthening of the action of control through the budget but a decrease in its intensity, volume, and comprehensiveness.

As a consequence of this tendency, it would also be expected the exact opposite of the trajectory of institutionalization¹⁸ of the different aspects connected to the distributive facet of the Brazilian budget verified in the Legislative Branch, which encompasses, for example, the normative consolidation of the CMO and the attempts to attribute an imposing nature to the budget allocations (PRAÇA, 2013).

Lastly, the scarcity of incentives for the parliament members to make control prevail over the interest in obtaining budget disbursement *a fortiori* suggests a posture of lenient exercise of the blocking decisions, with a systematic bias of releases of budget allocations in the face of the signaling of the audit body (which, regardless of the intrinsic merit of its decisions, is presumed not to be influenced by the same incentives that concern the parliament members in their legislative action).

4. Materials and methods

The empirical focus of the study is the decision content brought by the parliament members relative to the works, contracts, and expenditures submitted to the mechanism. The comparison framework for assessing the effects of the political nature of parliamentary control over the results of the mechanism in terms of decision outcome will, thus, be the difference in this legislative pattern relative to the recommendations of the TCU.

We compiled the decisions adopted in the process of resolving on the annual budget law by the COI for each control object in terms of the blocking or unblocking of the execution

¹⁷ Describing concrete cases: Gaspar (2020, pp. 81-82 and 106-108).

¹⁸ Understood herein, in a simplified manner, as the consolidation of formal and informal rules that direct the repertoire of procedures adopted by an organization (in this case, the Brazilian Congress) for the achievement of a given end, establishing in its participants a logic to be followed in the midst of the conflicts and ambiguities inherent to the political environment, capable of coordinating multiple activities, moderating conflicts, mitigating ambiguities, and reducing moral risks and transaction costs in the universe of political actions in question (MARCH; OLSEN, chapter 2, pp. 21-38).

of each work, in all fiscal years for which there was available data (2002 to 2020¹⁹). "Object" represents each item submitted to control and analyzed for blocking or unblocking purposes, which may be the totality of a public work or budget programming but may also be a contract, a covenant, or an installment of any of such instruments. This is the item specified in the corresponding Annex of the budget laws as being that which has its execution blocked. The time of registration of these decisions is the approval of the annual budget law by the CMO (and, later, by the plenum of the Congress), thus disregarding any vetoes (which occurred once, in 2009)²⁰.

The main data source used is the reports of the committee (COI) charged with examining the information from the TCU and proposing the blocking decisions to the CMO, available on the website of the CMO²¹, triangulated with information from the Annex of the corresponding Annual Budget Law, the Appellate Decisions by the TCU that handled the subject matter, or the tachygraphic notes from the sessions in which given voting sessions occurred²². Only decisions involving the recommendation for suspension (denominated "IGP") and, after the formalization of the criterion in the budget directives law (2011) were considered, the indication of the need for retaining or guaranteeing of values for the non-effectuation of the suspension (IGR).

The data on the decisions on individual objects are systematized in Table 1 of the Appendix²³. The decision-making behavior of the parliament members is typified in five categories: the coincidence of the decision by the committee with the recommendation of the TCU (1); the decision for unblocking the object contrary to the recommendation of the TCU based on supervening facts that objectively eliminate the cause of the recommended blocking²⁴ (2); the decision for the unblocking of the object contrary to the recommendation of the TCU based on a different assessment of the merits by the committee (3); the decision for blocking the object without there being a recommendation of the TCU for such, based on supervening facts that objectively bring up a cause for the blocking²⁵ (4); the decision for blocking the object without there being a recommendation of the TCU for such, based on a different assessment of the merits by the committee (5); and any other criterion occasionally adopted that does not correspond to the previous ones (6). In this universe, Criterion 3 indicates a substantive option

¹⁹ For fiscal years before 2002, there were no reports available on the webpage of the CMO.

²⁰ This option does not capture the final effect of the mechanism after the vetoes but allows analytically focusing the survey on the parliamentary behavior (the introduction of the president as a decision-making actor through the veto would bring another concurrent causal factor, which could distort the systematic assessment of parliamentary behavior developed herein).

²¹ Addresses are detailed in the Appendix. No reports from earlier than 2002 were found.

²² The entire path for compiling these pieces of information is available upon request to the author.

²³ The individual decisions, identified per year, public work, and object, are available in spreadsheet format upon request to the author.

²⁴ For example, the formal annulment of a public notice of procurement that was the object of a recommendation for blocking.

²⁵ This is the opposite of Criterion 2.

by the parliamentary decision-maker for disregarding the position of the TCU and not restricting the execution of a public work or contract considered by the TCU as irregular and giving rise to suspension, while Criterion 5 indicates the opposite position (the parliamentary option for blocking occurs even when the TCU does not indicate its indispensability). In the other cases, the alignment of the positions of the two agencies is verified²⁶. One must admit that the distinction between "divergence of merits" and "supervening fact" depends on an evaluative appreciation of whoever compiles the data. However, this is an unavoidable effect of any work involving the categorization of data of this nature, and the risks of the inexactness of this classification are inferior to the bias that would be introduced by the classification as "parliamentary divergence" of findings of this nature, in which the difference in positions does not derive from adjudications but objective facts²⁷.

5. Results and contrast of the hypotheses

Initially, it is possible to point out the occurrence of a gradual institutionalization process. The procedure gained complexity and stability in the successive texts of the budget directives law. The main agent is a specific committee formed by members of the CMO that received a first normative mention as an auxiliary collegiate to the general rapporteur of the budget with this specific purpose from 2002²⁸ and later came to be made permanent from 2007²⁹. The routine nature, already incorporated into the established budget procedures, is verified by the occurrence of the same process of analysis by a CMO committee and presentation of the report for voting on all fiscal years, with such a procedure being formally recognized as one of the specific competences of the CMO in its organic regulations³⁰. Hence, all elements converge to the characterization of a continuous process supported by the institutionalization of the activity, contrary to the theoretical expectation of the tacit or explicit abandonment by the Legislative Branch.

Another dimension for assessment is the volume of activity of the agencies involved with the mechanism: a greater disincentive to parliamentary control through the budget would lead to a trend of reduction over time in the effort dedicated to inspection. Chart 1 demonstrates the relative variation (with 2002 corresponding to 100) of the public works inspected by the TCU and the total number of decisions adopted by the CMO regarding blockings.

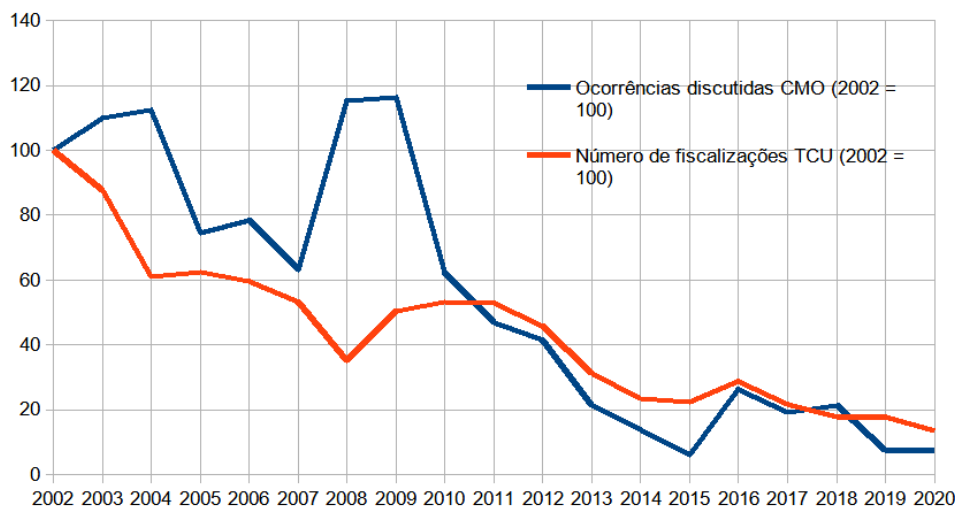
²⁶ Cases 2 and 4 resemble in practice Case 1, given that there would be no difference in the adjudication upon the merits in the position of both. Case 6, which would have an undefined meaning, does not occur in any of the examined years.

²⁷ Anyway, the great mitigating factor of the risk of any bias introduced by the categorization carried out is the opening to the individual data on the occurrences for replicability.

²⁸ Brazilian Congress Resolution No. 1/2001, §1, item III,

²⁹ Brazilian Congress Resolution No. 1/2006, article 24.

³⁰ Brazilian Congress Resolution No. 1/2006, article 2, item III, subitem "b", and articles 121, 122, 123, 124, and 125.

Chart 1 – Volume of public works inspected by the TCU and decisions adopted by the CMO per year (2002 = 100).

Source: Devised by the authors from data from the reports in Table 1

Indeed, a (relatively stable) drop in the volume of public works inspected by the TCU is verified, which corresponds to the first step of the mechanism and a measure of the gross effort applied to inspection. This drop does not mean an abandonment of the mechanism (the absolute number for 2020, the lowest number in the series, still represents 59 public works) but rather a smaller coverage of the universe of works. On the one hand, this result is strongly influenced by the systematic reduction in public investment in recent years (dramatic from 2015 on) that automatically leads to a decrease in the universe of public works to analyze. On the other hand, it may be influenced by a greater selectivity in allocating resources by the TCU upon concentrating on inspections of larger projects. Anyway, the reduction in over 80 % in this gross number of inspections does not allow refuting the hypothesis of a decrease in the efforts dedicated to inspection (although such a reduction is not due to a decision by the Congress but the TCU itself, given that the specifications of the Budget Directives Law on the universe of public works did not change).

In turn, the number of decisions discussed by the CMO also decreased in the same global proportion (over 80 %) but not in such a staggered manner: a permanence of high relative values is verified until 2009, followed by an abrupt drop for 2010, continuing them the downtrend in fairly stable proportions until the ten in 2019 (which corresponds more or less to 10 % of the 130 objects resolved on in 2002). Since this metric essentially represents the number of objects that received a recommendation for suspension or retention - IGP or IGR - by the TCU, here as well, most of the influence on the result will be explained due to factors concerning the TCU itself. The TCU basically attributes this decreasing number of recommendations to the positive effect of the inspection exercised year after year on the quality

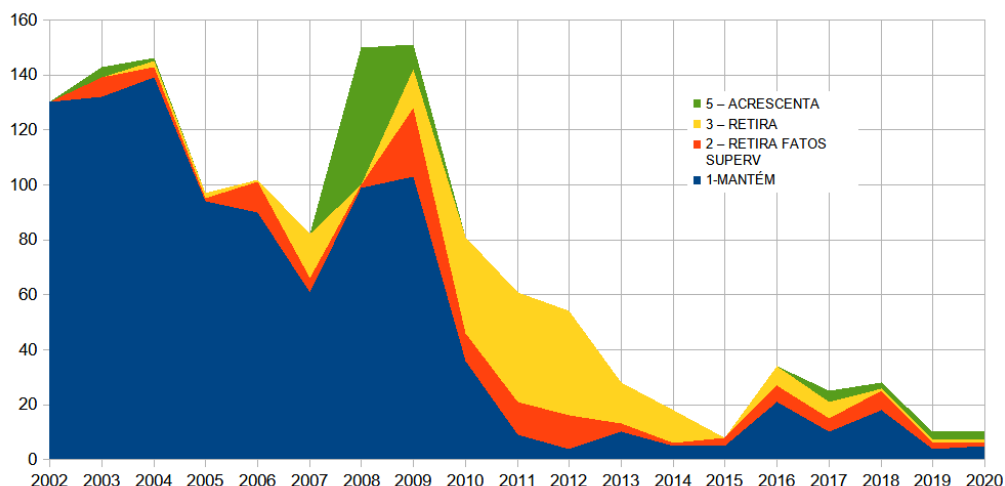
of the management of the public works (BRAZILIAN FEDERAL ACCOUNTING COURT, 2011, p. 33 of the report) or the faster correction allowed by the reprioritization of the inspections in favor of projects in early phases (engineering projects and first steps of public procurement) (BRAZILIAN FEDERAL ACCOUNTING COURT, pp. 8-10 of the vote). A second factor mentioned is that the TCU is fairly more restrictive in the recommendations for suspension when the works in question already have a high level of physical execution, especially if over the 75 % threshold (BRAZILIAN FEDERAL ACCOUNTING COURT, 2011, item 47, p. 9 of the vote), which makes it so that the significant works that persist in the second half of the examined period will be, in ever greater proportions, works with a high level of execution³¹.

Another factor mentioned by the TCU is the progressively more restrictive specification of the concept of indication of irregularity that motivates a recommendation for suspension (BRAZILIAN FEDERAL ACCOUNTING COURT, 2011, pp. 9-10 of the vote), approximating the formal rule of a better description of the material circumstances that justify the legislative intervention (which suggests the possibility that part of the recommendations for suspension in the initial years would represent something of an overshooting due to the excessive generality of the specification of the legislative demand for information). All these factors represent plausible causalities that are unrelated to internal elements of the parliamentary process. Hence, this facet of the reduction in the volume of recommendations for suspension (and, more generically, the volume of cases discussed within the decision-making scope of the CMO) does not seem to have an association with the dimensions gathered in theory (the interest of the parliament members in the inspection), given that the data are not conclusive neither in favor nor against the theoretical expectation.

For the second line of theoretical hypotheses, that of a more lenient decision-making stance relative to the recommendation of the audit body regarding the blocking of works or contracts, Chart 2 below points out the absolute number of each option of the committee, as well as the total number of occurrences verified each year³².

³¹ For the simple reasons that others were not initiated in this period of a dramatic drop in investments.

³² Right away, the absence of occurrences in Criteria 4 and 6 in all examined years is verified.

Chart 2 – Decisions by the COI relative to the blocking or unblocking of public works per year.

Source: Devised by the authors from data from the reports in Table 1

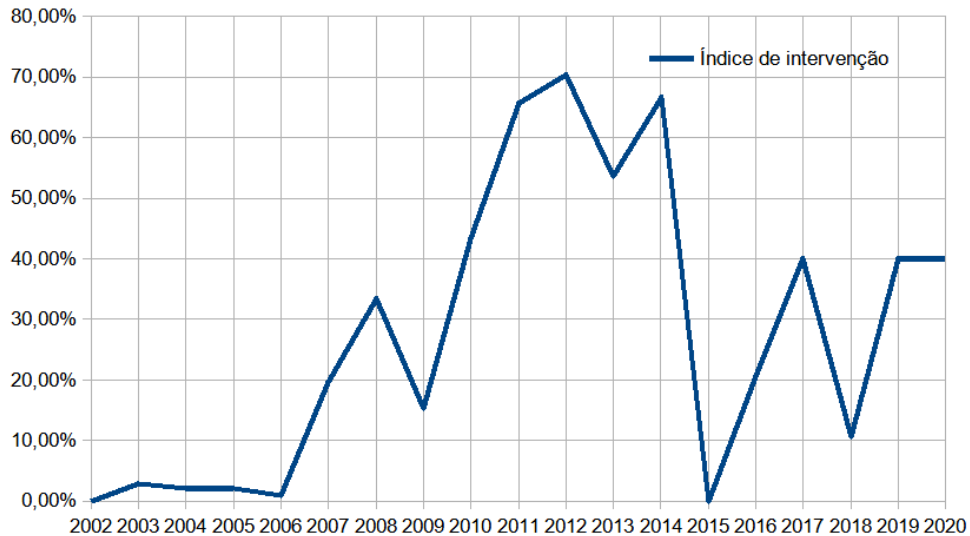
There is evidence of various types of behavior over time: fiscal years in which the coincident of positions between the TCY and the CMO is practically absolute (2004 to 2006, 2015), moments in which the clearance of works impugned by the TCU stand out massively (2010 to 2014), and those in which there is more blocking by the initiative of the CMO than clearances by parliamentary resolution (2007 to 2009). Hence, this first exploration of the data does not endorse any of the opposing theoretical positions, be it from a systematic bias contrary to the application of blocking as a means of control, be it that of the absolute convergence with the positions on merits suggested by the technical body. Also verified is the concentration over time of such distinct behavior profiles: from 2007 to 2009, a clear tendency to add elements to the blocking, while from 2010 to 2014, there was a very strong tendency to disregard the position of the TCU and clear works contrary to the recommendations. There is no way to escape the mention that, in 2009, the set of public works that presented, upon first examination, the greatest physical and financial size of the entire historical series was brought by the COI to the blocking frame of the Annual Budget Law: several works of refineries and ports of Petrobras (associated, as already pointed out, to the findings of the *Lava-Jato* Operation) and several large contracts of the North-South Railway. This finding strongly recommends that an analysis of parliamentary behavior consider the possibility of a differentiated decision-making dynamic due to works or projects that come to be associated, in a substantiated manner, with illegal movements of resources between contracted companies and public agents.

A quantitative refinement of these behavioral data may be captured in two indicators: the Intervention Index points to the percentage of the total decisions adopted each year that the decisions by the committee disagree in regards to the merits³³ from the recommendations of the

³³ The decisions with Criteria 3 and 5, already disregarding those that simply reflect supervening facts that mischaracterize a divergence of merits (Criteria 2 and 4).

TCU (in favor or against the blocking). This metric evaluates to what extent the parliament members are willing to adopt a position independent of the recommendation of the TCU within the universe of each year³⁴.

Chart 3 – Intervention Index



Source: Devised by the authors from data from the reports in Table 1

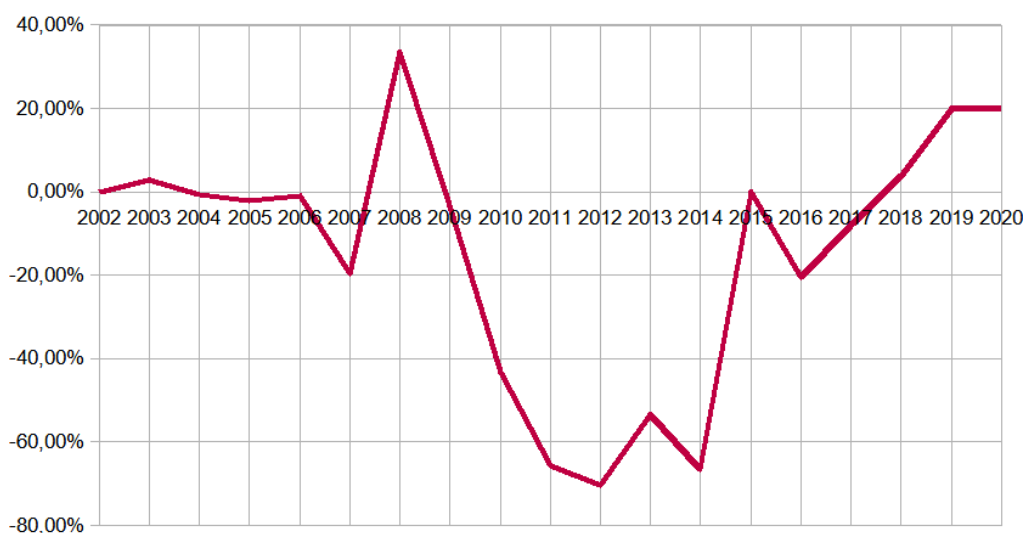
It becomes clear from Chart 3 that the pattern of the Legislative Branch is to strongly modify the basket of recommendations presented by the TCU, indicating the existence of its own political dynamic in such decisions that do not represent a mere rubber stamp of the decisions of the TCU, but a position of the parliament members on the Committee themselves - contrary to the theoretical expectation of disinterest or omission in this activity.

In the same movement of comparison between parliamentary decisions and proposals by the TCU, the Rigor Index points to the percentage of the total decisions adopted each year for which the net modifications of the decisions of the committee represent a more rigorous position in terms of control in the sense of blocking; in other words, from the modifications carried out in the merits in the opposite direction of that of the TCU, one subtracts, from the decisions for blocking without an express recommendation, those that represent an unblocking against the recommendation of the TCU³⁵. This "net blocking" metric assesses to what extent the parliament members are willing to adopt a more rigorous position in terms of preventing risks than the position adopted by the TCU itself³⁶ - the lower its value is, the more works the committee clears against the opinion of the TCU than the opposite.

³⁴ Table 1 contemplates not just this relative index (weighted by the total occurrences each year) but also the absolute number of diverging decisions each year.

³⁵ Subtract the occurrences with criterion 5 from the occurrences with criterion 3.

³⁶ Table 1 contemplates not just this relative index (weighted by the total occurrences each year) but also the absolute number of this balance of diverging decisions each year.

Chart 4 – Rigor Index

Source: Devised by the authors from data from the reports in Table 1

The Rigor Index proves the variability of the behavior by the Committee, at times more lenient, at times more rigorous than the position of the TCU, which points to a need for a more complex causal model than merely the postulation of a generic interest of the Legislative Branch in not preventing the execution of the disbursements or, conversely, a systematically conservative attitude motivated by a reputational fear in the face of corruption reports. Here, again, a clear shift stands out towards an attitude of giving clearance to public works in the 2010-2014 period, not systematically reproduced in the later periods, which indicates the plausibility of the existence of other causal factors specific to that period.

Finally, it is worth discussing the convergence or not of the positions of the report by the committee, on one side, and those of the plenum of the CMO and the Brazilian Congress³⁷. The decisions within both scopes were, in most cases, coincident with the proposals by the committee. There were seven modifications in total over the entire period: in 2020, three differences in merits relative to the COI, with one of them being against the opinion of the TCU³⁸; in 2019, one difference in merits representing a clearance contrary to the opinion of the

³⁷ As we have already pointed out, there is no record of differing positions between these two instances in the examined period.

³⁸ Two of such cases involve the Transnortheastern Railway, which the COI and CMO had systematically been including in the list of blocking since 2017 (from serious irregularities raised by several Appellate Decisions of the TCU) but did not formally receive the recommendation for suspension by the TCU in its consolidated list. Hence, within the adopted criteria, these last two objects were reclassified from criterion 5 (committee) to criterion 1 (plenum of the CMO) and were the object of highlight contrary to the position of the report by the committee, also voted in the CMO. This modification decreased the Intervention Index from 40 % to 27.27 % (given that the two modifications in the Transnortheastern Railway removed the position of addition relative to the TCU) but heavily reduced the Rigor Index from 20 % to -9.09 % (indicating that, besides abandoning the two additions relative to the position by the TCU made by the Committee, the plenum also removed a blocking contrary to the recommendation of the TCU).

TCU³⁹; in 2009, there was one modification due to a supervening fact, without divergence in merits, and two clearances contrary to the recommendation of the TCU⁴⁰. One may notice intense controversy in the minutes of the voting sessions on these five changes of merits⁴¹, with many parliament members vigorously defending the overruling of the blocking and others supporting the argumentative foundations of the decision for suspension adopted by the Committee, which suggests that different causal factors may concern different groups of parliament members regarding this activity. Here, a stylized fact emerges strongly from the analysis of the respective debates: in 2009, there was a relative division of the plenum of the CMO, with positions against and in favor of the report by the COI. In turn, in 2019 and 2020, the defense of the positions of the committee was restricted to its coordinators who presented the report, facing an almost unanimous barrier of criticism and contrary positions of the other parliament members present.

The small number of such divergences (seven, in a total of 1348 occurrences in the examined period) prevents the postulation of a diverse dynamic between the plenum of the CMO and the collegiate that it selects among its members to examine the subject matter. Two causal explanations that are not mutually exclusive arise immediately as possible interpretations for this finding. The first, that the CMO invests in the representativity of the composition of the committees so to render them a faithful reflection of its internal composition, thus turning them into reliable delegate agents of the plenum capable of minimizing the asymmetry of information that may exist between this specialized collegiate and the set of members⁴². The second possible interpretation is the effect of the timing induced by the institutional rules: with the voting of the decision for blocking or not the public works being mandatory before voting the budget law⁴³ (the object of primordial interest of all parliament members of the commission) and with the budget approval procedures in the CMO being carried out in an extremely accelerated pace at the end of the fiscal years, the transaction cost to promote the reopening of decisions already debated within the scope of the committee may prove to be unbearably high for the CMO members, delaying the most relevant vote under the distributive aspect and that represents the *raison d'être* of the commission itself. On the other hand, the emergence of reversions of positions on significant public works in the past two years through separate voting in the

³⁹ This modification increased the Intervention Index from 40 % to 50 % but reduced the Rigor Index from 20 % to 10%.

⁴⁰ Such changes did not numerically change the Intervention Index but reduced the Rigor Index from -3.31 % to -4.64 %.

⁴¹ Available at https://www.camara.leg.br/internet/comissao/index/mista/orca/atas/2009/REX/12rex_nt.pdf (for 2009), https://www.camara.leg.br/internet/comissao/index/mista/orca/atas/2019/ROR/17ror_nt.pdf (for 2019), and <https://escriva.camara.leg.br/escriva-servicosweb/html/60684> (for 2020).

⁴² A classical premise of the information approach for the decision-making organization of the Legislative Branch (LIMONGI, 1994; MALTZMAN, 1998).

⁴³ Obligation established indirectly by the Budget Directives Law upon specifying that the budget law will include the annex of blocking, and explicitly since 2007 by article 122, sole paragraph, of Brazilian Congress Resolution No. 01/2006.

plenum of the CMO may indicate a new dynamic in which the distributive factors start to be imposed with more strength relative to the controlling position⁴⁴, no longer within the scope of the specialized committee but diluted in the totality of the Commission members.

6 Conclusions

Our fundamental empirical findings are that the mechanism remained in operation for over two decades, in a growing institutionalization process, and that the decisions by the Legislative Branch regarding the public works (i.e., about confirming or not the blocking suggested by the TCU) have a heterogeneous profile, with discernible periods (that do not appear to be random) in which the Congress maintained in its decisions the positions suggested by the TCU (or even blocked more works than those indicated), and others (equally discernible) during which the decision-making pattern of the Congress was more lenient, disregarding a significant part of the recommendations and clearing a large number of public works with pointed out indications of irregularities. This suggests the inadequacy of unidirectional theoretical hypotheses, be they in the sense that the parliamentary behavior would tend to minimize any restriction to the budget disbursements (due to a predominant distributive role), be it in the opposite sense, that the fear of losing one's reputation due to corruption scandals could influence the legislators to act more strictly upon authorizing projects with illegality or inefficiency problems. This heterogeneity of behaviors, as well as its alignment in given periods of time, renders it recommendable to consider more complex models with different incentive factors concerning also distinct parliamentary groups within the decision-making mechanism - which is consistent with the recent conclusions by Carvalho (2003) in the sense of the existence of different electoral connections for Brazilian parliament members and, therefore, substantially different behavioral incentives for different groups within the Brazilian Congress.

In a future research agenda, quantitative studies could delve into the intrinsic characteristics of the public works and contracts affected by the mechanism (value, the severity of the irregularities, geographical distribution, and executing agency, for example) and their correlation with the volume and sectoral composition of public investment. In turn, research based on case studies could seek, from interviews and the analysis of minutes and other formal records, the joint identification of multiple causal factors at the moments of transition from one decision-making profile to the next. Another path of great potential is comparatively analyzing the arguments used in debates when divergences occur within the CMO about recommendations of the report by the COI for verifying the fundamentals alleged to maintain the blocking and abandon it.

⁴⁴ This may be reinforced by the potentially distinct nature of the legal responsibility that arises, for the parliament member, from the elaboration of a report on the one side and the exercise of the vote on the other (Article 53 of the Brazilian Constitution).

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APPENDIX

TABLE 1 – DECISIONS BY THE COI PER YEAR COMPARED TO THE POSITIONS OF THE TCU

	C1	C2	C3	C4	C5	C6	Total	Int. I. (abs.)	I. Int. (%)	Rig. I. (abs.)	Rig. I. (%)	NIns p
2002	130	0	0	0	0	0	130	0	0.00%	0	0.00%	435
2003	132	7	0	0	4	0	143	4	2.80%	4	2.80%	381
2004	139	4	2	0	1	0	146	3	2.05%	-1	-0.68%	266
2005	94	1	2	0	0	0	97	2	2.06%	-2	-2.06%	271
2006	90	11	1	0	0	0	102	1	0.98%	-1	-0.98%	259
								19.51				
2007	61	5	16	0	0	0	82	16	%	-16	19.51%	231
								33.33				
2008	99	1	0	0	50	0	150	50	%	50	33.33%	153
								15.23				
2009	103	25	14	0	9	0	151	23	%	-5	-3.31%	219
								43.21				
2010	36	10	35	0	0	0	81	35	%	-35	43.21%	231
								65.57				
2011	9	12	40	0	0	0	61	40	%	-40	65.57%	230
								70.37				
2012	4	12	38	0	0	0	54	38	%	-38	70.37%	200
								53.57				
2013	10	3	15	0	0	0	28	15	%	-15	53.57%	136
								66.67				
2014	5	1	12	0	0	0	18	12	%	-12	66.67%	102
2015	5	3	0	0	0	0	8	0	0.00%	0	0.00%	97
								20.59				
2016	21	6	7	0	0	0	34	7	%	-7	20.59%	126
								40.00				
2017	10	5	6	0	4	0	25	10	%	-2	-8.00%	94
								10.71				
2018	18	7	1	0	2	0	28	3	%	1	3.57%	77
								40.00				
2019	477	2	1	0	3	0	10	4	%	2	20.00%	77
2020	5	1	1	0	3	0	10	4	40.0%	2	20.00%	59

Source: Devised by the authors from the reports by the CMO committee. Individual reports available at <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-mistas/cmo/subcomissoes> (reports prepared from 2007) and <https://www2.camara.leg.br/orcamento-da-uniao/leis-orcamentarias/loa> (reports prepared from 2002 to 2006).

Nfisc Column: 2002 to 2011 - Brazilian Federal Accounting Court (2011, Figure 7, p. 14 of the report); 2012 - Brazilian Congress (2012, p. 6); 2013 - Brazilian Congress (2013, p. 5); 2014 to 2019 - Brazilian Federal Accounting Court (2019, Chart 11, p. 87 of the report); 2020 - Brazilian Federal Accounting Court (2021, p. 6).

The year corresponds to the fiscal year when the decisions by the CMO were adopted in the processing of the budget law (e.g., the decisions compiled on line "2017" were formalized and divulged through the Annual Budget Law for 2018).

Captions for the columns (decisions relative to blocking and unblocking):

C1 - Occurrences for which the committee decided in the same way as the TCU

C2 - Occurrences for which the committee decided for the unblocking of an object for which the TCU recommended blocking, for which a significant supervening fact existed that eliminated the cause of the blocking

C3 - Occurrences for which the committee decided for the unblocking of an object for which the TCU recommended blocking, based on a different appreciation of merits of the same facts

C4 - Occurrences for which the committee decided for the blocking of an object for which the TCU did not recommend blocking, for which a significant supervening fact existed brought about the plausibility of blocking

C5 - Occurrences for which the committee decided for the blocking of an object for which the TCU did not recommend blocking, based on a different appreciation of merits of the same facts

C6 - Occurrences that do not fit the previous items

Total - Total number of occurrences/objects in the year

Int. I. (abs.) - Intervention Index (absolute): total number of occurrences for which the committee did not abide by the position recommended by the TCU due to a different interpretation of the merits (sum of columns C3 and C5)

Int. I. - Intervention Index: Intervention Index (absolute) divided by the total number of occurrences in the year

Ri. I. (abs.) - Rigor Index (absolute): number of occurrences for which the committee determined the blocking of the object when it was not recommended by the TCU minus the number of occurrences in which the committee determined the unblocking of an object when the blocking was recommended by the TCU (column C5 minus column C3)

Rig. I. - Rigor Index: Rigor Index (absolute) divided by the total number of occurrences in the year

NInsp - Number of inspections carried out by the TCU for the specific service of the public work inspection mechanism determined by the Budget Directives Law.