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**Improving the Relationship  
Between the Tribunal de Contas da União  
and the Brazilian National Congress**

**Strategy Paper**

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## **Introduction**

Brazilian Constitution establishes that the Tribunal de Contas da União (TCU), the Brazilian Court of Audit, shall assist the National Congress to exercise the external control over the federal administration, overseeing its legality, legitimacy, efficiency and effectiveness.

Although this mission is an integral part of previous Constitutions since 1946, the portion of work executed by the TCU to directly respond to Congress' requests was not significant until 1988, when the current Federal Constitution was enacted.

Since then, the number of works performed by the TCU to the Congress has increased substantially. From a few dozens of audits, consultations and requests of information, TCU now has to carry out more than three hundred assignments, mostly in the area of public works audits, an entirely new field of action.

This increase of workload is a result of the enlargement of powers given to the Congress and TCU by the Constitution. Several parliamentary committees were created and they now ask the TCU to help them in their work.

The Court has to give priority and to appreciate requests from the National Congress in an urgent manner, which is a challenge to the TCU. With the same workforce, it now has to deal with more and more activities, some of them requested by a political body, the National Congress, whose agenda is often times driven by events of short duration, while supreme audit institutions are more concerned with improvements that are measured in years.

This new environment and reality in which the TCU now operates requires a different approach. Audit works have to be performed in accordance with Congress' needs and expectations. It means that TCU has to streamline its work and establish a client-server relationship with the Congress to better serve the Nation.

To achieve these goals, TCU needs to develop and strengthen ties with the Congress, its committees, members and staff. GAO experience might be adapted to TCU needs, which has to streamline audit works and respond to those new challenges. Therefore, this strategy paper will be focused on:

1. Discuss and suggest a protocol to serve as a guideline for the audit work, consultations and information requested by the Congress.

2. Discuss and suggest ways to follow-up and evaluate the work done for the Congress on a permanent basis.

## **Background**

Constitution of 1988 has enlarged the powers given to the Congress and the TCU, but the control over the federal administration is a mandate of the Congress, which is helped by the TCU. It is set up this way because the Congress does not have the necessary means to do this task and also because the audit work has to be done by an independent institution with no political bias.

To effectively support the Congress, TCU must be professional, objective, fact-based, nonpartisan, nonideological, fair and balanced in all its work. TCU strives to meet the Congress' needs within available resources and exercises the independence necessary to guarantee that its work conform to the highest professional standards.

As part of the Brazilian tradition and legal system, a special Court, the TCU, which does not belong to the Judiciary branch, but has some quasi-judicial powers, performs this impartial work.

TCU performs audit works by its own initiative or as a request of the Chamber of Deputies, of the Federal Senate, of a Technical or Inquiry Committee, financial and performance audits in any unit of the three branches of the federal government.

The Court renders information requested by the Congress, its Houses or Committees on financial and performance of the federal government. It also has to audit, by request of the Budget Committee, any program or project included in the annual budget, evaluating its economy, efficiency and effectiveness.

TCU has a constitutional obligation to fulfill requests from the Congress and its committees. To effectively accomplish this obligation, TCU work must be as transparent and responsive as possible.

Until 1988, almost all the work carried out by TCU was self-initiated. Congress used to request only a few audits or consultations. Since then, the number of assignments increased very quickly, which requires special treatment by TCU.

### **Requests by the National Congress**

Traditionally, the National Congress requests to the TCU copies of lawsuits, information on federal administration issues and audit works.

In 1997, for instance, the Court received seventy requests from the Congress. Thirty-one referring to information about audit works and thirty-nine requesting audits, copies of reports or diverse information. The most important requests of audits that year referred to: (1) Central Bank of Brazil – to investigate the responsibility for the analysis of the operation and registration of bonds issued by the State of Pernambuco; (2) Bid contract of lotteries by the Federal Savings Bank; (3) Privatization process of the Companhia Vale do Rio Doce and the contract of two companies to evaluate its assets; (4) Transfer of federal resources to the State of Bahia for buying food for schools; (5) Banco Meridional do Brasil S. A. – to assess its privatization process. There were also requests of information related to operations carried out by federal banks.

Throughout that year, the Court carried out 102 audits, and ninety-six were related to public works funded by federal resources. The results of all those works were presented to the Presidents of the Federal Senate, the Chamber of Deputies and the Joint Committee of Plans, Public Budgets and Control of the National Congress.

In 2001, TCU conducted 900 audits. More than 42% (384) were related to public works and were requested by the Congress. That represented an increase of almost 95% when compared to the previous year, as shown in the table below.

| <b>Year</b> | <b>Public works audited</b> |
|-------------|-----------------------------|
| <b>1997</b> | 96                          |
| <b>1998</b> | 110                         |
| <b>1999</b> | 135                         |
| <b>2000</b> | 197                         |
| <b>2001</b> | 384                         |

Considering that the Constitution establishes that TCU has to give priority to works requested by the Congress in an urgent manner, they represent an important portion of the Court's workload.

#### **Congress access to TCU audit work**

Only the Presidents of the Federal Senate and the Chamber of Deputies, and Chairpersons of technical or inquiry committees, when approved by those committees, may request audit works to TCU.

In order to give to Congressmen thorough information about the work in progress, TCU decided to expand the Congressmen's access to reports, lawsuits and other documents issued by the Court. In 1999, it approved an internal regulation (Resolution no 125/99) that established the ways Members of the Chamber of Deputies and the Federal Senate could request audits, copies of lawsuits and other information.

Despite the Court's willingness to give all information requested by Congress, TCU must guarantee the constitutional right of due process of law assured to individuals involved in lawsuits not yet finished in the Court. Rights of privacy and defense have to be preserved in all circumstances. The Court cannot allow any individual to access and misuse information that could jeopardize fundamental rights, especially those related to data protected by fiscal and banking secrecy. Moreover, to protect those who present denunciations, the Court usually does not disclose their names and personal data.

In order to reach a compromise between Congress needs and constitutional rights, Congressmen are held responsible to keep the necessary secrecy over sensitive information, until the Court reach its final decisions.

### **Protocols to guide work requested by the Congress**

Protocols suggested in this paper are general principles governing TCU work for the Congress encompassing audits, consultations and staff support for committees.

The increasing number of congressional requests severely affects TCU's ability to complete audits in a timely manner and with high quality level. Therefore, it is necessary to provide the Congress with clearly defined, consistently applied, well documented, and transparent policies and procedures relating to TCU's work.

Such protocols could provide a means of holding TCU accountable for commitments made to the Congress and ensuring that TCU is consistent, equitable and balanced in dealing with all committees and Members of the Houses. It would also allow the Court to eliminate inconsistencies among TCU units.

In order to effectively assist the Congress, it is necessary to encourage audit teams to meet more frequently with requesters and their staff to discuss objectives, scope and methodology of audit works.

Meetings between requesters' and TCU's staff would provide a better understanding of the requester's need for information and the nature of the investigation. During those meetings, TCU members and staff would also (1) discuss the Court's ability to respond within the desired time frame, and (2) provide a verbal estimate of the level of TCU resources required.

Once the requester and TCU have agreed to proceed with the request, TCU would provide the following to the requester:

- (1) A letter confirming the agreements reached and the requester acceptance of the terms, including a planning phase and a preliminary expected completion date.
- (2) Commitment to provide: (a) Periodic status reports on the work; (b) notification of any significant changed circumstances affecting the scope of work or related time frames for its completing; (c) briefing(s) on the preliminary and final results of the work, and (d) notification before the draft report is sent to the audited body for comment and offer a copy of the draft for informational purposes.

### **Follow-up requests from the Congress**

Audits requested by the National Congress as well as any other audit work, have to be followed up by TCU, in order to make sure whether the decisions taken by the Court were implemented.

In some cases, it might be difficult for the audited body to implement a particular recommendation. Subsequent improvements in programs or institutions, or even their discontinuity, may cause the obsolescence of the decision. Thus, it is necessary to create a tool capable of verifying if the audited body is really following TCU decisions as far as informing whether a particular decision is no longer applicable or feasible.

TCU has already a tool that could meet these requirements. In 2000, it developed a system named RADAR, designed to store all decisions issued by the Court as well as to follow up its implementation, to make sure that the federal administration follows the Court's rulings.

RADAR registers all orders and recommendation issued to federal agencies to improve their activities and the status of their implementation. One of its modules was designed to provide information about public administration obtained by audit teams when performing their work.



It seems adequate that if some decisions are not feasible or no longer applicable, TCU should waive audited bodies of doing so. A reasonable period of time could be five years. After that, if it is the case, TCU could remove an inadequate or outdated recommendation from the database. Audited bodies could also ask for the removal of some inadequate or unfeasible order by means of appeals to the Court's rulings.

The system was also designed to provide information for the Congress and the general public. It allows any individual to know the results of TCU decisions, types of orders or recommendations issued to federal agencies, penalties applied to officials, pending decisions and amounts reimbursed to the National Treasury as a result of the audit work.

Since all works requested by the Congress have to be conducted in an urgent manner, it would be advisable to inform the Congress, its Houses and Committees, about the ongoing requested work. That information could be included in the quarterly reports sent to the Congress by TCU.

In order to provide clear and timely information for the Congress, it would be advisable to create a specific module in RADAR to store and monitor all works requested by the Congress.

### **Development proposed**

In order to prepare the protocols suggested in this paper and to design a special module of RADAR system to follow up requests made by the Congress, TCU and the Congress could create a staff work group to discuss and establish guidelines for the documents they would have to prepare.

Such group would meet on a regular basis, conducting interviews with members of the Congress and TCU. During all phases of implementation of such protocols and specific

follow-up module for the Congress, TCU must encourage Members of the Congress and staff to consult with their partners in the Court to resolve any possible difficulty that may arise.

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Protocols and RADAR module could be drafted in a period of six months. Systems could be implemented in an additional period of six months, during which managers responsible for their development would gather feedback, evaluate them and correct their route.

During the implementation phase of the project, it is necessary to provide training of TCU and Congress staff. A one-week course would be enough to cover all the aspects of the project.

Every month, the group would give information to the Congress and TCU justices about the work in progress. The table below shows a timetable for the project development starting in January, 2003.

| <b>Activity</b>   | <b>Jan/Mar</b> | <b>Apr/Jun</b> | <b>Jul/Sep</b> | <b>Oct/Dec</b> | <b>Stakeholders</b>                       |
|---|----------------|----------------|----------------|----------------|---|
| Discussion and definition of guidelines                                   | XXX            |                |                |                | Staff appointed by Congress and TCU       |
| Interviews with members of the Congress and TCU.                          | XXX            |                |                |                | Staff and members of the Congress and TCU |
| Meetings between members of the Congress and TCU to resolve difficulties. |                | X              |                | X              | Members of the Congress and TCU           |

|  |     |     |     |     |                                     |
|--|-----|-----|-----|-----|-------------------------------------|
| Draft of protocols and RADAR module              | XXX | XXX |     |     | Staff appointed by Congress and TCU |
| Implementation of the systems                    |     |     | XXX | XXX | Staff appointed by Congress and TCU |
| Training of TCU and Congress staff               |     |     | X   |     | TCU and Congress staff              |
| Follow-up and reports about the work in progress | XXX | XXX | XXX | XXX | Staff appointed by Congress and TCU |

As a means to highlight audit reports of broad institutional interest to the Congress, TCU would strive to provide information to the various congressional committees by means of briefings and testimonies. It would be helpful to show the TCU needs of emphasizing the importance of performance audits and of allocating more resources to this type of work.

**Conclusion and results expected**

Since 1946, TCU was required to assist the National Congress on the external control over the federal administration. However, for more than forty years that mandate was of relatively little consequence. Until the 1980’s, virtually all of TCU’s work responded to TCU’s own sense of need and priorities. Just a negligible part of TCU work was performed in response to congressional requests.

TCU’s recent history shows a clear pattern of continuing evolution in response to the evident needs of the Congress. New responsibilities are assigned, sometimes by law, often through a pattern of committee requests and also on TCU’s own initiative. Once the responsibilities are accepted and the capacity to meet them is built, they rarely disappear. Rather, they become further accretions to TCU’s accumulating mission.

As the mission of the Court evolves, it is inevitable – indeed, it is intended – that TCU’s relationship with the Congress changes. TCU seeks to make its work more

immediately relevant to the legislative policy process and, as a result, the Congress and its committees become more directly interested in the scope, the nature, and the timing of that work.

Significant improvements were made in the timeliness of TCU response to the Congress' requests. The average time for completing a job requested by the Congress was reduced from 220 to 150 days.

Nevertheless, more improvements are needed. Audit works often times did not give the desired answers to lawmakers concerns about a particular program or agency. On the other hand, TCU provides information that aids congressional decision-making or informing the public debate to a significant extent. Therefore, it is important to show to the Congress the effect of TCU rulings on the workings of the federal administration, and the accomplishments that resulted in financial and other benefits, like improving public health, social security, computer security controls, and establishing more effective and efficient government operations.

Protocols designed to streamline the work that TCU carries out for the Congress could give to its members a more comprehensive view about the nature of the audits and the constraints of time and human resources allocated.

It would enable TCU to better serve the Congress and the nation, to improve satisfaction with TCU work, ensure equitable treatment of all requesters, eliminating perceptions of unfairness in dealing with requests from the various committees, close expectation gaps between the work requested by the Congress and the results presented by the Court.

TCU could also use more efficiently its human resources to fulfill all its constitutional mandates, matching services with needs.

In doing so, TCU could project a uniform institutional image: an image of consistent, fair, and balanced work.