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EMPOWERMENT OF THE NATIONAL CONGRESS, SECRET BUDGET AND OTHER DISTORTIONS OF THE PUBLIC BUDGET: PROPOSAL FOR CHANGE

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Abstract

The empowerment of the National Congress to change the Annual Budget Law Project is materialized in the secret budget, in imposing parliamentary amendments and in financial transfers to states, Federal District and municipalities through agreements and transfer contracts. This protagonism of Parliament has contributed decisively to the fragmentation and inefficiency of public policies, to the weakening of planning and the misuse of public resources by facilitating the action of lobbies interested in private gains.

Key words: National Congress's empowerment, secret budget

JEL: H7, H74, H77

SUMMARY

1 Introduction

The growing empowerment of the National Congress to alter the Annual Budget Bill (PLOA) is materialized in the secret budget, either in the institutionalized form recently declared unconstitutional by the Federal Supreme Court (STF), or veiled, as will be seen in this paper, in the imposed parliamentary amendments and the mechanism currently in place to make financial transfers to states, Federal District (DF) and municipalities through agreements and transfer contracts.

This protagonism of the Parliament has decisively contributed to the fragmentation and inefficiency of the planning and execution of public policies and the misuse of public resources by facilitating the action of lobbies interested in private gains, besides hindering the achievement of the common objectives of the Federation, foreseen in art. 23 of the Federal Constitution (CF/88).[1]

The study is relevant not only for the expressiveness of the financial values involved, but also for identifying and analyzing factors with potential to compromise the harmony of the relationship between the Legislative and Executive Branches, and between these and the subnational entities.

The 2022 budget law, for example, consigned R$ 19.4 billion to federal entities and private non-profit institutions. This amount is more than twice the Federal Government's entire spending on basic education[2] and three times the amount spent on the maintenance and recovery of the country's highways.[3]

The study was based on the analysis of the FC/88, laws, regulations, and databases on voluntary transfers maintained by government agencies, especially the Office of the Comptroller General and the National Treasury Secretariat.

1 Art. 23 - The Federal Government, the States, the Federal District and the Municipalities have common competence:
I - watch over the Constitution, the laws and the democratic institutions and preserve the public patrimony;
II - care for the health and public assistance, protection and guarantee of the disabled; (See ADPF 672)
III - protect documents, works and other assets of historical, artistic and cultural value, monuments, remarkable natural landscapes and archeological sites;
IV - prevent the evasion, destruction, and de-characterization of works of art and other assets of historical, artistic, or cultural value;
V - provide the means of access to culture, education, science, technology, research, and innovation;
VI - protect the environment and fight pollution in any of its forms;
VII - preserve the forests, fauna and flora;
VIII - to foment agricultural production and organize food supply;
IX - promote housing construction programs and the improvement of housing conditions and basic sanitation; (See ADPF 672)
X - fighting the causes of poverty and marginalization factors, promoting the social integration of disadvantaged sectors;
XI - register, monitor, and inspect the concessions of rights to research and explore water and mineral resources in their territories;
XII - to establish and implement an education policy for traffic safety.
Sole paragraph. Complementary laws shall establish norms for cooperation between the Federal Government and the States, the Federal District, and the Municipalities, with a view to balancing development and welfare at the national level

2 Subfunction 368 - Basic Education

3 Subfunction 782 - Road Transportation

2 The protagonism of the National Congress in budgetary matters and possible conflict with the constitutional rule

The protagonism and empowerment of Parliament in the budget issue are not unmotivated, new or unknown.

In fact, it is a reaction of the National Congress to the discretionary power of the President of the Republic to release budget funds, especially those arising from parliamentary amendments, often obtain political support for the approval of projects of his interest.

There is plenty of news in the press about this subject, as illustrated by the headline in the Estadão newspaper, Caderno Política, on 02/15/2022:

> Government authorizes record payment of amendments before the election
> The government of President Jair Bolsonaro (PL) has authorized spending up to R$ 25 billion in parliamentary amendments ahead of the October elections. Decree published last Friday establishes that almost half of these resources will come out of the secret budget. The volume of expenses indicated by deputies and senators and that received the president's approval for spending until September is the largest in the Bolsonaro administration, allowing to irrigate strongholds of politicians before the electoral disputes.[4]

The reaction of the National Congress against the Executive Branch's discretionary powers in the preparation and execution of the budget began with the adoption of a questionable interpretation of § 3 of art. 166 of the Constitution, which is clear when it establishes that only budget amendments that are compatible with other budget laws, that indicate the necessary resources, and that are related to errors and omissions, can be approved.[5]

Notwithstanding this clear constitutional command, it was and is the understanding of Parliament that the economic-financial indexes and parameters considered by the Executive Branch (inflation, exchange, interest, GDP, etc.) for the estimates of revenues and expenses contained in the PLOA can be understood as errors if different from its own or more updated projections.

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4 Available at: https://politica.estadao.com.br/noticias/geral,governo-autoriza-pagamento-recorde-de-emendas-antes-da-eleicao,70003979871. Accessed on: 11/30/22

5 Art. 166. .....
§ Paragraph 3 The amendments to the annual budget bill or to the projects that modify it can only be approved if:
I - are compatible with the pluri-annual plan and with the budget guidelines law;
II - indicate the necessary resources, only those coming from expense cancellation being admitted, excluding those that fall upon:
a) appropriations for personnel and their charges;
b) debt service;
c) constitutional tax transfers to States, Municipalities and the Federal District; or
III - are related:
(a) by correcting errors or omissions; or
b) with the provisions of the bill's text.

In other words, according to the current interpretation given by Parliament to the wording of the aforementioned article 166 of CF/88, the Executive Branch's more optimistic or pessimistic vision for the economic situation of the following year, in comparison with another more up-to-date one or with its own vision of the future, can be considered an error in the PLOA and, therefore, subject to correction.

Such an understanding diverges from market practice, where each economic agent (Central Bank, banks, investment funds, consulting firms, etc.) constructs its own economic scenarios without it being possible to state ex ante that one scenario used for planning is right and another wrong, since all deal with expectations dependent on uncertain, random factors and subjective analyses subject to change every minute.

Thus, one cannot state that the projections prepared or considered by the Executive Branch to support the preparation of the PLOA are wrong if different from those that the National Congress would like to consider when considering that bill, even because both can be wrong.

Note that the CF/88 did not authorize Parliament to update or revise the planning inherent in the PLOA, which is exactly what the National Congress does today, but only to correct errors and omissions that may be identified therein, which are completely different things, since errors and omissions can be corrected and not updated as is done today, therefore, without constitutional authorization.

But Parliament went further and, in defiance of that constitutional restriction, began to authorize budget rapporteurs to cancel appropriations in the PLOA, even without any evidence of error or omission, in order to simply release resources for parliamentary amendments.

Such authorization is contained in art. 52 of Resolution 1/2006-CN, which regulates the budget process within the National Congress, in clear violation of the constitutional command.[6]

For the year 2022, for example, the sectoral rapporteurs were authorized to cancel, by means of a rapporteur's amendment and without the need to point out error or omission, up to 20% of the total programmed investments and financial investments in the PLOA, and the cut can reach up to 40% of the value of each project individually.[7]

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6 Art. 52 The Preliminary Report will be composed of two parts:
Preliminary Opinion
.....
II - Special Part, which will contain, at least
a) the conditions, restrictions, and limits that must be obeyed by the Sector Relators and by the General Relator, in the reallocation and cancellation of appropriations contained in the project;
b) the eventual previous cancellations, made in the appropriations of the project, prior to the action of the Sector Rapporteurs;

7 (Preliminary Opinion)
24. Observing the prohibitions and restrictions established in items 14 to 16, the sector rapporteurs may use, besides the resources foreseen in item 20.I of this opinion, resources resulting from the cancellation of appropriations relative to expenses with investments (GND 4) and with financial investments (GND 5) contained in the fiscal and social security budgets, respecting the limits established in item 25.
24.1 The cancellation of appropriations to which this item refers will be carried out by means of sectorial rapporteur amendments destined to increase the reserve of resources in the respective thematic area.

The General Rapporteur, in turn, also in 2022, under the protection of art. 52 of Resolution 1/2006-CN, in addition to prior cuts in the amount of R$ 2.6 billion, presented 30 amendments, amounting to R$ 16.5 billion[8], totaling changes that added resources on the order of R$ 19.1 billion in various budget actions and programs.

This is not a trivial or simple hermeneutic issue. On the contrary, such interpretation, although little discussed in academic and legal circles, is at the core of the entire empowerment of the Legislative Branch because it is through it that budget revenues are re-estimated in billions and programs contained in the project prepared by the Executive Branch canceled each year to serve as a source of funds to meet amendments to the annual budget bill, including for the secret budget, as will be seen below.

This understanding that the interpretation currently given by Parliament about its broad competence to amend the PLOA is mistaken was reinforced by the STF in the recent trial of the case regarding the secret budget, which took place on 12/19/2022, when the Court established the thesis that the general rapporteurs can submit amendments exclusively to correct errors and omissions:

> The amendments of the General Rapporteur of the budget are intended, exclusively, to correct errors and omissions, under the terms of art. 166, § 3, III, line "a", of the Federal Constitution, being forbidden its undue use for the purpose of creating new expenses or expanding the programming provided for in the annual budget bill. (2022, p. 94)

Justice Rosa Weber, the Rapporteur of the case, dealt only with the amendments of the General Rapporteur, therefore not having examined the constitutionality of the other amendments (sectorial rapporteurs, of the revenue and commissions) that also do not observe the constitutional restriction of being restricted to correcting errors and omissions.

It seems clear, however, that the rules applied to the general rapporteurs of the PLOA also apply in full to the sectoral rapporteurs, the revenue rapporteurs, and other actors with the competence to propose changes to the budget piece.

In addition to the sectoral, revenue, and general rapporteurs, 513 congressmen, 81 senators, 27 state benches, and the amendments authored by the standing committees of the Federal Senate and the House of Representatives, as well as the two chambers of both houses, which can each submit eight amendments, can propose changes to the annual budget bill.

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25. For the cancellation of appropriations referred to in item 24 of this opinion, the following must be observed, in the set of budget programming that make up each thematic area: I. overall limit of twenty percent (20%) of the total programmed in GND 4 and GND 5 in the bill; II. limit per subtitle of forty percent (40%) of the value of the bill. Available at: https://www2.camara.leg.br/orcamento-da-uniao/leis-orcamentarias/loa/2022/tramitacao/parecer-preliminar>. Access on 12/01/2022

8 Amendments identified as Primary Result 9 (PR 9). Source Siga Brasil.

The impact of the interventions of the National Congress in the budget bills is evident in Table 1 below. In this table we can see that 6,689 modifications to PLOA 2022 were approved, in the amount of R$ 21.2 billion, by means of individual and collective amendments.

TABLE 1 - Individual and collective amendments approved in PLOA 2022

R$ million

Author (Type)	Quantity	Amount
State Bench	415	7.540,2
Commission House of Representatives	101	1.124,8
Federal Senate Committee	64	939,2
Federal Deputy	5.231	9.439,9
Senator	866	1.490,5
Total	**6.689**	**21.212,6**

Source: Siga Brasil. Own elaboration.

The sources for the approval of these amendments come from the re-estimation of revenues, as mentioned above, the cut in programming contained in the PLOA and the contingency reserve consigned in the project with the specific purpose of attending to amendments of an imposed nature.[9]

In PLOA 2022, the balance of the Contingency Reserve destined to the attendance of imposed individual amendments was R$ 16.2 billion, which, added to the previous cuts in the project's appropriations, in the amount of R$ 2.7 billion and to the net re-estimation of revenues, in the amount of R$ 47.2 billion, makes up the amount of R$ 66.1 billion of resources available for allocation directly by the Parliament without any interference or participation of the Executive Branch.[10]

This amount is higher than all the investments programmed for the year, which was R$ 44 billion, and corresponds to 49% of the total discretionary expenses in the budget subject to programming, i.e., those in which managers have some degree of freedom to execute them or not.

Even in fiscal years 2020 and 2021, in which the economy was strongly affected by the effects of the COVID19 containment measures, such as social withdrawal, for example, in which a drop in tax collection was expected, R$ 7.00 billion and R$ 19.00 billion, respectively, were added to the total primary revenue initially estimated by the Executive Branch. To wit:

9 Law 14.194/ 2021. Art. 13. .....
§ 4 The 2022 Budget Bill will contain specific reserves to meet:
I - individual amendments, in the amount equivalent to the mandatory execution of the fiscal year 2017, corrected in the manner established in item II of § 1 of art. 107 of the Transitory Constitutional Provisions Act; and
II - amendments from state benches of mandatory execution, in an amount corresponding to that provided for in Article 3 of Amendment to the Constitution No. 100 of 2019, less the resources allocated to the Special Fund for Campaign Financing, referred to in item II of the caput of Article 16-C of Law No. 9.504 of September 30, 1997.

10 Annex II of the Preliminary Opinion to PLOA 2022. Available at: https://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2022/parpre/Parecer.pdf. Accessed on 12/01/2022.

TABLE 2 - Total Primary Revenue[1]

R$ billion

	2020	2021	2022
PLOA	1.348,40	1.283,20	1.596,90
LOA[2]	1.355,40	1302,20	1.644,10
INCREMENT	7,00	19,00	47,20

Source: Central Government Primary and Nominal Results Statement; Laws 14.303/2022; Law 14.144/2021; Law 13.978/2020

[1] net transfers by revenue sharing

[2] Annual Budget Law (LOA)

Once the problem of the source of funds for amendments was solved, the Parliament began to work on instituting mechanisms that would oblige the Executive Branch to execute the appropriations it included in the LOA and, thus, guarantee the delivery of the funds to the beneficiaries it chose (states, Federal District, municipalities, and private non-profit entities). This topic will be addressed in the next section.

3 Imposed amendments

The mandatory execution of amendments began with the approval of Constitutional Amendment (EC) #86 of 2015, which created the so-called imposed individual amendments (art. 166, § 11).[11]

The global value of these amendments, whose projects, programs and/or beneficiaries are chosen at the parliamentarians' discretion, usually destined to their electoral bases, corresponds to 1.2% of the Net Current Revenue (RCL) of the previous fiscal year, and must be compulsorily executed by the Executive branch, except in cases of technical impediment.

Later, in 2019, Constitutional Amendment (EC) 100 extended the obligation of budget execution to amendments submitted by the state benches, in the amount of 1% of the RCL.[12]

In the same fiscal year 2019, Constitutional Amendment #105 was approved, which innovated by allowing the transfer of the amounts corresponding to the individual amendments intended for states, DF and municipalities without the formalization of covenants or similar contracts, and without

11 Art. 166. § The budgetary and financial execution of the programming referred to in § 9 of this article is mandatory, in an amount corresponding to 1.2% (one whole and two tenths' percent) of the net current revenue realized in the previous fiscal year, according to the criteria for the equitable execution of the programming defined in the supplementary law provided for in § 9 of art. 165.

12 Art. 166. § The execution guarantee referred to in § 11 of this article also applies to the programs included by all the amendments of the initiative of State or Federal District congressmen, in the amount of up to 1% (one percent) of the net current revenue realized in the previous fiscal year

any link to a project or activity resembling a true donation, since such resources become the property of the beneficiary upon transfer.[13]

These amendments began to be jokingly called PIX amendments in the press, because of the speed and ease with which the financial transfers could be made.

> Use of 'pix amendments' grows and reaches R$ 3.2 billion; experts criticize lack of transparency.
> Destination of the resources is up to the municipalities benefited; 'They distort public policies and facilitate the emergence of cases of corruption,' says the president of the Open Accounts NGO.[14]

In 2020, the National Congress adopted another controversial measure by including in the 2020 LDO (Law #13,898/2019), through Law #13,957, of 2019, a provision that empowers the budget Rapporteur-General to create amendments (Primary Result 9 - PR-9) for the purpose of changing or including new programming in the PLOA, i.e., without any relation to the correction of errors or omissions as required by CF/88.[15]

These amendments (RP-9), whose constitutionality was questioned by political parties before

13 Article 166-A. The individual imposed amendments presented to the annual budget bill may allocate resources to the States, the Federal District, and the Municipalities by means of:
I - special transfer; or
II - transfer with a defined purpose.
§ 1 The resources transferred in the form of the caput of this article will not integrate the revenue of the State, the Federal District and the Municipalities for the purposes of distribution and for calculating the limits of expenses with active and inactive personnel, under the terms of § 16 of art. 166, and the indebtedness of the federated entity, being forbidden, in any case, the application of the resources referred to in the caput of this article in the payment of
I - expenses with personnel and social charges related to the active and inactive, and pensioners; and
II - charges related to debt service.
§ In the special transfer referred to in item I of the caput of this article, the resources:
I - will be transferred directly to the benefited federative entity, regardless of the execution of an agreement or similar instrument;
II - will belong to the federated entity upon the effective financial transfer; and
III - they will be applied in finalistic programming of the areas of competence of the Executive Power of the federal entity benefited, observing the provisions in § 5 of this article.
§ Paragraph 3 The federal entity benefiting from the special transfer referred to in item I of the head of this article may sign technical cooperation contracts for the purpose of subsidizing the monitoring of the budget execution in the application of the resources.
§ In the transfer with a defined purpose referred to in item II of the caput of this article, the resources will be:
I - linked to the programming established in the parliamentary amendment; and
II - applied in areas of constitutional competence of the Federal Government.
§ At least 70% (seventy percent) of the special transfers referred to in item I of the caption sentence of this article must be applied to capital expenditures, subject to the restriction referred to in item II of § 1 of this article.

14 Available at: <https://jovempan.com.br/noticias/politica/uso-de-emendas-pix-cresce-e-chega-a-r-32-bilhoes-especialistas-criticam-falta-de-transparencia.html> Accessed on 11/30/2022.

15 Law 13.957/2019: Art. 1 Law No. 13,898, of November 11, 2019, shall come into force with the following changes: "Art. 6, § 4, II - c) 6. of general reporter of the annual budget bill that promote changes in programming contained in the budget bill or inclusion of new ones, excluding those of technical nature (RP 9);

the STF, through an Argument of Violation of a Fundamental Precept - ADPF,[16] under the allegation of lack of transparency and impersonality, came to be called by the press a secret budget, as extracted from the article in Correio Braziliense, on 09/08/2022.

> Learn what the secret budget is and how it works
>
> The secret budget is what the rapporteur's amendments, also known as RP9, have become known as. It is a tool that allows parliamentarians to request federal funds without details such as identification or even the destination of the resources.
>
> Comprova Explains: Created in 2019 and implemented in 2020, the so-called "rapporteur's budget amendments" became known as "secret budgets" because they allow parliamentarians to allocate funds that come directly from the Federal Government's coffers without transparency about where the money is going. By not specifying names, limits and destination, the mechanism facilitates, in practice, cases of corruption.[17]

The central point of the discussion lies in the fact that it was up to the General Rapporteur of the PLOA to elaborate the amendments, but, in fact, these reflected the individual wishes of parliamentarians who were not identified during the processing of the PLOA.

The indication of the amounts and real beneficiaries of the amendments was done later, during the execution of the budget, through direct contact between the General Rapporteur and the Executive Branch, which would open space for political pressure and co-optation between the Powers.

The STF's decision on the referred ADPFs occurred on 12/19/2022, when that Court, by majority vote, considered unconstitutional the mechanism created by the Rapporteur-General's amendments.

Justice Rosa Weber, reporting on the case, declared incompatible with the Brazilian constitutional order the budgeting practices enabling the so-called "secret budget scheme", consisting of the improper use of the amendments of the General Rapporteur of the budget for the purpose of including new public expenses or programming in the Federal Government's annual budget bill. (2022, p. 94)

The STF also determined that all budget areas and public administration bodies that have committed, paid, and liquidated expenses through these amendments, in the fiscal years from 2020 to 2022, must publish data on the services, works, and purchases made. The respective requesters and beneficiaries must also be identified, in an accessible, clear and reliable manner, within 90 days.

In fact, the secret budget has always existed, what happened was a change in the axis of power,

16 Arguments of Fundamental Precept Infringement - ADPFs 850, 851, 854 and 1014

17 Available at: < https://www.correiobraziliense.com.br/holofote/2022/09/5035358-saiba-o-que-e-e-como-funciona-o--orcamento-secreto.html> Accessed on 01/12/2022.

it left the Executive to the Legislative, and an institutionalization of the mechanism occurred with the legalization of the rapporteur's amendments (Law #13,898/2019, art. 6, § 4).

Indeed, before the legalization and institutionalization of the secret budget, the most influential and prestigious parliamentarians would address individually and directly to the ministers of each portfolio to request the release of funds for projects of their interest or for their electoral strongholds.

In other words, the negotiation for the release of public budget funds also occurred - similarly to the amendments of the general rapporteurs (RP-9), in an informal, veiled, and non-transparent way, beyond the reach of any control mechanism.

Besides, there was no symmetry of forces between the parties, since it was the individual will of the petitioning Parliamentarian opposed to the vigorous will of the whole bureaucratic-political machine of the Executive Branch to release or not the requested resources.

Any refusal to comply with the request would affect the relationship with that specific parliamentarian.

Differently, in the RP-9 amendments the Budget Rapporteur General has assumed the power to indicate the release of budget funds on behalf of a set of leaders and prestigious parliamentarians acting with institutional authority.

The demands he presented to the Executive Branch lost their individual character and began to reflect the legal demands of Parliament itself and of an influential and select group of deputies and senators.

To deny these requests would be to enter into direct confrontation with the National Congress and, in the limit, compromise governability by not approving matters of interest to the Executive.

Finally, by canceling programming contained in the budget bill and reviewing or updating the planning inherent in the budget piece carried out by the Executive, without constitutional authorization, since this authorizes the correction of errors and omissions and not the review or updating of planning, creating the imposed amendments, the Parliament has made effective its protagonism and empowerment in budgetary matters.

4 Dysfunctionalities of the current model of voluntary transfers

The research revealed that the current model of voluntary transfers of financial resources from the Federal Government to the subnational entities incurs in serious dysfunctionalities, among them those we could designate as false decentralization, which, combined with the protagonism and empowerment of Parliament in budgetary matters, contributes to the inefficiency of the system, an increase in cases of corruption, and the weakening of the autonomy of the federated entities.

False decentralization because, along with the transfer of financial resources, there is, in fact, no decentralization of responsibilities because the transferring agency remains fully responsible for managing the approved projects and activities in all their phases until the final rendering of accounts.

It is up to the transferor of resources to monitor and follow up the physical and financial compliance of projects, evaluate proposals, projects, terms of reference, reasonableness of budgets, reports, physical-financial schedules, calls for proposals, and accountability, in addition to verifying the compliance of the grantor with various provisions related to fiscal responsibility, pursuant to art. 6 of Interministerial Ordinance #424/2016, of the Ministries of Planning, Development, and Management, of Finance, and of Transparency, Inspection, and Comptroller General of the Federal Government.[18]

Article 22 of the aforementioned Interministerial Ordinance, for example, lists 28 requirements necessary for the formalization of agreements and transfer contracts[19] (compliance with federal taxes, FGTS, payment of securities, publication of reports related to fiscal management, regularity in the minimum application of resources in education and health, regularity in the fulfillment of debt limits, personnel, accounts payable, etc.).

Decentralizing, retaining these attributions, distorts the principle because it requires the transferring agency to maintain an organizational and personnel structure similar to the one needed for the direct execution of projects, with the disadvantage that the procedure becomes more complex, since there is the interposition of an intermediary (state, Federal District, or municipality) between the transferring agency and the object of the agreement.

The situation gets worse as thousands of contracts are formalized every year. To mitigate the problem, since most federal agencies do not have the organizational structure and staff to perform the services, including monitoring, which requires on-site visits to the projects benefited, the agencies were authorized to hire an official federal financial institution for the operational management of the transfer contracts, as regulated in Normative Instruction MP #2 of 24/01/2018, of the Ministry of Planning, Development and Management.[20]

The Caixa Econômica Federal - CAIXA has been centralizing these services. Table 3 below shows that in the last three years (2019-2021), 17,593 transference contracts were formalized, with a total value of R$ 18.3 billion.

18 Art. 6 The grantor's competencies and responsibilities are
I - manage the projects and activities, through:
a) monitoring and follow-up of physical and financial compliance during execution, and evaluation of physical execution and results;

19 transfer contract: administrative instrument, of reciprocal interest, by means of which the transfer of financial resources is carried out through a public federal institution or financial agent, acting as the Federal Government's agent;

20 Art. 1 This Normative Instruction establishes rules and guidelines for the execution of service contracts to be signed between agencies and entities of the federal public administration and official federal financial institutions, to act as Mandataries of the Federal Government, in the operational management of transfer contracts, under Decree No. 6,170 of July 25, 2007

TABLE 3 - Total pass-through contracts - 2019 - 2021

R$ billion

YEAR	Nº OF PASS-THROUGH CONTRACTS	VALUE
2019	6.117	6,8
2020	4.726	6
2021	6.750	5,5
Total	**17.593**	**18,3**

Source: Data available on CAIXA's website. Follow-up of Operations - Public Sector. Own elaboration.[21]

Each one of these contracts represents the direct intervention of the Federal Government in the state, district and municipal levels for the execution of projects whose choice of priority was made by that Government, which will also be responsible for monitoring, evaluating and approving their execution.

The Report Evaluation of the Management of Voluntary Transfers of the Federal Government, prepared by the Office of the Comptroller General (CGU) stated that, despite the recent regulatory changes that have occurred in the level of voluntary transfers in order to improve the process, it is still excessively slow, not very efficient and effective. (2018, p. 3)

The Report states that the time spent for the completion of a voluntary transfer, a decisive factor for the success of the implementation of public policy, is 5.16 years, which is extremely high considering that the vast majority of contracts consist of small projects, worth less than R$ 750 thousand. (2018, p. 15)

It cites, as an example, the Ministry of Agriculture, Livestock and Supply, which between 2008-2016 signed about 11,000 contracts, most of which were for the purchase of machinery and equipment. Although these objects are similar, this process generated several unique agreements and transfer contracts, which in turn generated thousands of low-value bidding procedures to be executed by state and municipal governments.

With regard to accountability, the aforementioned report notes that there is an annual inflow of cases at this stage of around 12,874 contracts - annual average for the period 2013-2016 - while the conclusion of 8,009 contracts is observed, which would be the outgoing operational capacity, generating an annual operational deficit of 4,865 contracts.

It concludes, therefore, that there is a notorious imbalance between the operational capacity of the agencies and the volume of work spent on the accountability phase of voluntary transfers. (2018, p. 22)

21 Available at: https://webp.caixa.gov.br/siurb/ao/pag/filtro-cid.asp. Accessed on 11/30/2022

In fact, a search in the Transparency Portal database, made available by the CGU,[22] reveals that there are 1,004 agreements and transfer agreements with the status of accountability under analysis, amounting to R$ 311 million, although the validity of such contracts expired in 2008, 2009 and 2010, i.e., more than 12 years ago.

This means, considering the reliability of the data from the Transparency Portal, that the Federal Government still does not know, even today, the destination of these millions of Reais, even more than 12 years after the date set for the conclusion of the objects initially agreed upon.

The TCU, in turn, after extensive audit work on a sample of 400 unfinished projects, concluded that the main cause that led to the paralysis of projects contracted through agreements and transference contracts with subnational entities was the interruption of the budget-financial flow, responsible for 39.41% of the paralyzed projects.

In other words, in the sample analyzed, the submission of local economic-financial planning to the federal level compromised the execution of the agreed physical-financial schedules and led to the paralysis of works and the waste of public resources.

Another important dysfunctionality concerns the fact that the current system does not allow, during the elaboration of the budget, the discussion of the real priorities established by the local instances, through open and participatory debates.

The impossibility of discussion stems from the large number of transfers that are made each year, as seen in Table 3 above, considering the short period for processing the PLOA in Parliament, and also by the fact that the entire discussion takes place in Brasilia, far from the communities to be benefited.

The importance of popular participation is widely recognized and stimulated by legislation, especially by the Law of Fiscal Responsibility, which encourages participation and the holding of public hearings during the processes of preparing and discussing plans, budget guidelines, and budgets.[23]

The literature also records several studies that demonstrate the importance of popular participation for the effectiveness of the institutions' performance.

Putnam (2006) states, based on almost 20 years of research, that more important for the effectiveness of institutions than the availability of economic-financial or human resources is the existence of civic communities and social capital.

22 Available at: https://www.portaltransparencia.gov.br/download-de-dados/convenios. Accessed on 05/20/2022.

23 Complementary Law No. 101, of 2000

Art. 48 - The following are instruments of transparency in fiscal management, which will be widely disclosed, including through electronic means of public access: the plans, budgets and budget guidelines laws; the rendering of accounts and the respective prior opinion; the Budget Execution Summary Report and the Fiscal Management Report; and the simplified versions of these documents.

§ 1o Transparency will also be ensured through

I - incentive to popular participation and the holding of public hearings during the processes of elaboration and discussion of plans, budget guidelines law, and budgets;

He clarifies that civic community can be understood as those communities where factors are present that denote citizen participation in decisions of public interest. Social capital refers to features of social organization, such as trust, norms, and systems, that contribute to increasing the efficiency of society.

This is not what happens in Brazil in the current model of voluntary financial transfers to the federated entities in the sense that the discussion and approval of projects, at the federal level, without the participation of these entities, make it impossible to rank the real needs and priorities of the federated units and inhibit the flourishing of any trace of civism or social capital.

This procedure creates financial dependence and compromises the planning of the federal entities because the execution of physical-financial schedules of projects and programs included in the PLOA becomes dependent on fiscal restrictions and the operational capacity of the transferring agency, regardless of the importance of the projects to be executed or of the action of the beneficiary entity.

The states, the Federal District, and the municipalities are, or should be, the ones immediately responsible for identifying and meeting the legitimate needs and demands of their populations and for the investments made in their territories.

It is reasonable to assume that the authors of the budget amendments have a good knowledge of the regions to be benefited with federal funds and that their choices, therefore, would meet the demands of the local communities, given the notorious needs of each one of them in practically all areas.

But such reasoning should not be accepted as good practice in the institutional relationship between the federated entities, much less as an efficient mechanism for the execution of public policies that aim to achieve the common objectives of the Federation.

This is because allocating resources for investments - health posts, sanitation, sports courts, or resources to support philanthropic entities - does not mean that the demands that are at the top of the beneficiary communities' priorities will be met, nor does it allow them to discuss the positive and negative points and externalities of each project approved at the Federal level.

In fact, this voluntary transfer mechanism ends up stimulating the entities of the Federation to seek resources for agreements with congressmen and ministries for actions belonging to government programs with higher budget allocations that, according to their evaluations, have a greater chance of approval, and not to meet their real priorities.

In this case, from the subnational entity's point of view, the logic seems to prevail that it is preferable to sign the agreement to execute the offered project than to lose the financial resources made available.

To illustrate this situation of the choice of priorities, see the article in the newspaper O Estado de São Paulo, in the Political Notebook, on 05/25/2022,[24] under the headline Purchase of garbage trucks skyrockets and inflated prices add up to R$ 109 million.

According to the article, the municipality of Barra de São Miguel (AL), with 8,434 inhabitants, received three garbage compactor trucks, which remain stationary most of the time, while 80 km away the municipality of Marimbondo (AL), with 13,193 inhabitants, received none despite the mayor's insistent requests.

In the city of Minador do Negrão (AL) the truck bought with resources of parliamentary amendment is one of the largest available on the market, with 15 cubic meters. To fill the vehicle, which cost R$ 361.9 thousand, the city takes two days.

The newspaper notes that the trucks are expensive, require trained employees to operate them and have high maintenance costs. A study by the Audit Court of Rio de Janeiro considers inadvisable, under the financial point of view, the use of compactor trucks in cities with less than 17 thousand inhabitants.

The examples reported by the newspaper reveal the disarticulation between the congressmen, the federal government and the municipalities in the identification and choice of priorities because, in the cases cited, we have a municipality that received more trucks than it needed, another that needed none, and a third that received a vehicle with a much higher capacity than its real needs.

It should be noted that the transfer of resources to the federated entities and the definition of priorities is not a neutral activity from the point of view of the correct application of public resources, as can be seen in the above-mentioned article that points to suspicions of overbilling in garbage trucks acquired with federal funds.

In fact, the current model of voluntary transfers constitutes a fertile ground for corruption and misappropriation of public resources. The Rapporteur of the Judgment nº 1.188/97-Plenário, of the Federal Audit Court - TCU, when analyzing the matter, pointed out that

> "(...) among the various mechanisms used by the squanderers of the public coffers, the seriousness of the interference of a political nature to define which projects will have preference when it comes time to receive appropriations and budget credits, to the detriment of other works in which this intermediation does not occur. It is the influence of bribery, offered by corrupting contractors, defining which works will be carried out, among the many that await the contribution of scarce public resources to be continued."

24 Available at: https://www.estadao.com.br/politica/dinheiro-publico-banca-centenas-de-caminhoes-de-lixo-com-precos-inflados/. Accessed on 01/12/2022

Table 4 below shows the total investments foreseen in the 2021 and 2022 LOAs, in each region of the country, allowing a macro view of the investments foreseen in the annual budget law, going beyond the transfers made through agreements and transference contracts.

The magnitude of the values expressed therein reveals the impact of the intervention of the National Congress in the allocation of investment resources in the different regions.

The North Region, for example, was benefited, by parliamentary initiative, with increases in investments of 187% and 220% in the years 2021 and 2022, respectively, when comparing the values contained in the proposal presented by the Executive Branch and the final values approved by the National Congress.

A significant increase is also observed in the other regions, which received increases in investments of at least 80%.

TABLE 4 - Investment Expenditures - by region

R$ billion

REGION	2021			2022		
	PL 28/2020	LOA	%	PL 19/2021	LOA	%
Midwest Region	1.597,40	2.944,10	84%	1.470,40	2.887,80	96%
Northeast Region	3.648,10	7.439,50	104%	3.153,60	5.776,20	83%
North Region	1.361,70	3.903,50	187%	1.002,70	3.204,20	220%
Southeast Region	1.303,70	3.528,20	171%	1.601,01	3.837,50	140%
Southern Region	1.327,20	2.861,50	116%	1.292,37	2.543,70	97%
NA National	16.583,70	31.794,10	92%	17.004,50	25.145,50	48%
EX Exterior	71,20	67,40	-5%	142,60	134,30	-6%
TOTAL	**25.893,00**	**52.538,30**	**103%**	**25.667,18**	**43.529,20**	**70%**

Source: CMO Opinion, Volume IV, Table 4.1.11 Investment Expenses - By Federal Government. Available at: https://www2.camara.leg.br/orcamento-da-uniao/leis-orcamentarias/loa/2020/tramitacao/parecer-da-cmo/parcmo.html. Access on 12/01/2022

The disparity in the number of resources proposed by the Executive Branch, in comparison with that approved by the National Congress, shows that both have different diagnoses, visions, and priorities for the execution of public policies aimed at reducing inter-regional inequalities.

The consequence of these different diagnoses and visions is a disjointed, punctual, personalistic, and inefficient action in the process of allocating resources in the Federal Government's budget to assist the federated entities.

And worse, perhaps none of these diagnoses correspond to the real needs of the country's regions since they did not participate in the debate to choose the approved projects.

The autonomy of the subnational entities is also affected because many actions that should be carried out by them, or at least conducted in close cooperation with the federal level, are planned, executed and supervised exclusively and directly by federal agencies or private entities.

This is what happens, for example, with the Housing First Project for the Homeless Population[25] whose objective is to promote the definitive exit of families and individuals from the street situation through immediate access to housing in safe places, under the coordination of Ministry of Women, Family and Human Rights (MMFDH).

All the actions for the execution of this project, which involve training and supervision of technical teams, leasing of space, adaptations, and small reforms, can be carried out without any participation of the state or municipality, as long as the person responsible for transferring the resources opts for the application modalities 50 - Transfer to private non-profit institutions, or 90 - Direct application, in which case the action will be conducted by the Ministry itself.

The same happens with the actions aimed at promoting the agricultural sector, in the scope of Ministry of Agriculture, Livestock and Supply, which involves the dissemination of technology, studies, research, exhibitions, agricultural fairs, support for production chains, associations, the acquisition of mechanized patrols, the maintenance and conservation of local roads, and other initiatives with the purpose of promoting the development of the agricultural sector.

This project can also be executed in Application Modalities 50 - Transfer to private non-profit institutions, and 90 - Direct application, without any participation, cooperation, or intervention by the federated unit receiving the transfer.

The transfers made by the federal level, in the form of Term of Commitment,[26] directly to civil society organizations[27] for the achievement of purposes of public interest proposed by these entities, also excludes local managers from the conception, planning and inspection of projects to be executed in their area of jurisdiction.

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25 Budget Program 5034 - Protecting life, strengthening the family, promoting and defending human rights for all; Action: 21AR - Promotion and Defense of Rights for All

26 Law No. 13.019, of 2014. Art. 2
VIII - term of development: instrument through which partnerships established by the public administration with civil society organizations are formalized for the achievement of purposes of public and reciprocal interest proposed by civil society organizations, involving the transfer of financial resources

27 Law 13.019, of 2014: Art. 2 For the purposes of this Law, it is considered:
I - civil society organization:
a) private non-profit entity that does not distribute among its partners or associates, counselors, directors, employees, donors or third parties any results, surplus, operational surplus, gross or net, dividends, exemptions of any nature, participations or portions of its assets, obtained through the exercise of its activities, and that applies them integrally in the accomplishment of the respective social objective, immediately or through the constitution of an equity fund or reserve fund;
b) the cooperative societies foreseen in Law nº 9.867, of November 10, 1999; those integrated by people in situations of personal or social risk or vulnerability; those reached by programs and actions to fight poverty and generate work and income; those focused on fomentation, education, and training of rural workers or training of technical assistance and rural extension agents; and those enabled to execute activities or projects of public interest and of a social nature.
c) religious organizations that are dedicated to activities or projects of public interest and social nature that are different from those intended for exclusively religious purposes;

It doesn't take much imaginative effort to conclude that local managers have more information and knowledge, given their proximity to the problem, to execute, monitor or evaluate these tasks than the federal agency located in Brasilia, often thousands of miles away and with little knowledge of the local reality.

Therefore, it can be seen that the growing protagonism and empowerment of the National Congress in the choice of projects and the allocation and execution of budget funds is complemented by an inefficient mechanism of resource transfers to the units of the Federation, which remain under their full tutelage, and, in many cases, away from the local actions necessary for the monitoring and evaluation of the execution of projects and government programs developed in their area of jurisdiction.

5 Proposal of a new model for voluntary resource transfers to subnational entities and private non-profit institutions

The analysis of the legislation that regulates voluntary transfers[28] reveals that the current centralizing model that protects the subnational entities benefited by the transfers comes essentially from the need to comply with the constitutional principle of accountability foreseen in art. 70 of CF/88.[29]

According to this constitutional command, any individual or legal entity, public or private, that uses, collects, keeps, manages or administers public money, assets and values or for which the Federal Government is responsible, or that, on behalf of the Federal Government, undertakes pecuniary obligations, must render accounts.

In order to comply with CF/88, that is, that the transferring agencies charge the accountability of federal funds transferred to subnational entities and private entities, the current centralizing model for transferring funds was instituted, which incurs in several inefficiencies and dysfunctionalities, as seen in the previous topic of this work.

The new model we are now presenting should stimulate and privilege local populations in the definition of demands and projects to be executed as a priority, unlike what happens nowadays, in which parliamentary amendments and ministerial programs induce transfers due to the greater or lesser availability of resources in each government program.

28 Federal Constitution, Complementary Law No. 101 of 2000 (LRF), Decree-Law No. 200 of 1967, Law No. 14.194 of 2021 (LDO 2022), Decree No. 6.170 of 2007, Interministerial Ordinance No. 424 of 2016, among others

29 Art. 70. .....
Sole paragraph. Any individual or legal entity, public or private, who uses, collects, keeps, manages or administers public money, assets and values or for which the Federal Government is responsible, or who, on behalf of the Federal Government, undertakes pecuniary obligations, will render accounts.

This change would be in line with the construction of a participatory public administration, which reinforces the role of individuals and local communities through intervention in the conduct of public affairs, reinforcing the idea of the federative pact and social control. (HABERMAS, 1997)

The model now proposed also tries to incorporate good experiences in intergovernmental transfers, notably those called fund-to-fund, where transfers are made from a federal fund to a state, Federal District, or municipal fund, and the automatic legal transfers, whose main characteristics are the waiver of agreements or similar contracts and the provision of simplified or synthetic accounts.[30]

A recurring argument that justifies the centralization of controls in the bodies that carry out voluntary transfers to municipalities, as is currently the case, is the issue of the possible technical and organizational incapacity of these entities to apply and supervise the federal funds received for the planned purposes, which would lead to non-compliance with the principle of accountability.

Such an argument, however, does not stand up to a little more careful analysis of the subject.

First because in the current model, the transferring agencies can only certify the correct application of resources because the subnational entities produce and make available, with their own human and organizational resources or contracted in the market, the necessary documents for the control and inspection work of the federal agency, such as budgets, projects, reports, accountability, etc.

In other words, the inefficiency of the procedure is clear, since the subnational entity prepares or evaluates and approves the technical works contracted in the market and then submits them to new evaluations by the transferring agency.

Second, because the analysis of the annual balance sheets of municipalities reveals that the amount of funds they receive each year from voluntary transfers is a small fraction of the total budget revenues, less than 1%, as shown in the Brazilian Public Sector Accounting and Fiscal Information System (SICONFI), of the National Treasury Secretariat, for the year 2021, which contains the balance sheets of 4,890 municipalities, of which 1,235 received funds from voluntary transfers from the Federal Government, as shown in Table 5 below.

30 Examples of simplified transfers are: 1) NATIONAL SOCIAL ASSISTANCE FUND (FNAS) - Law number 8.742, 1993 (Organic Law of Social Assistance). It is destined to finance governmental actions in the social assistance area; 2) NATIONAL FUND OF HEALTH (FNS) - Law number 8.080, 1990. It concentrates financial resources to be applied in public health actions and services; 3) National School Meals Program (PNAE) - Provisional Measure No. 2.178-36, 2001 - School Meals - Resources for the purchase and distribution of food to elementary and pre-school students in public schools and philanthropic entities; 4) Direct Money at School Program (PDDE) - Provisional Measure No. 2.178-36/2001. 5) Program of Support to States and Municipalities for Youth and Adult Basic Education (EJA) - Law No. 10.880, 2004. Resources destined to expand the offer of vacancies in public basic education for young people and adults.

TABLE 5 - Share of covenant revenues in the total budget revenues of municipalities - 2021

	Quantity	Relevance of the share of grant revenue in the municipality's total budget revenue
Municipalities with a population of up to 25,000	762	0,9%
Municipalities with a population of 25,001 to 50,000	188	0,50%
Municipalities with a population of 50,001 to 100,000	120	0,30%
Municipalities with a population of 100,001 to 200,000	67	0,20%
Municipalities with a population of over 200,001	98	0,20%

Source: Brazilian Public Sector Accounting and Fiscal Information System (SICONFI), from the National Treasury Secretariat. Available at: https://siconfi.tesouro.gov.br/siconfi/pages/public/consulta_finbra/finbra_list.jsf; Access on 05/13/22. Own elaboration.

In other words, if the municipality doesn't have the technical and organizational capacity to apply the resources that originated in transfers from the federal level, it also won't have the capacity to apply those collected in its level of competence and that give them the financial autonomy expressly granted by CF/88.

In light of the above, to insist on the reasoning that the subnational entities lack technical or organizational competence would also be tantamount to calling into question the rendering of accounts regularly submitted by them to the respective internal control bodies, State and Municipal Audit Courts, Municipal Chambers, District Chamber, and Legislative Assemblies, as well as the very competence of these institutions to perform the control and inspection functions granted to them by the Constitution.

At this point, it is important to note that art. 70 of CF/88, when demanding the correct application of public resources, refers to all resources, whether they belong to the federal, state or municipal level.

Federal resources do not require more care and attention than those of the other levels of the Federation. All of them have the same nature and are subject to the same constitutional requirements, which is why it does not seem to make sense the understanding that the municipality has the technical and organizational capacity to manage the public resources of its competence (99%) and does not have it to manage those received from the federal level (1%) through agreements and transfer contracts.

In short, the new model would have the following configuration:

1. Creation, in each municipality interested in receiving voluntary transfers, of a Municipal Multisectoral Development Fund - MDDF-M and, in each state and in the Federal District, a State Multisectoral Development Fund - MDDF-E;

2. The resources destined to these funds will be linked to a list of priority projects and programs defined by the beneficiary entities themselves, after holding public hearings with the communities involved;
3. The choice of projects to be contemplated by the beneficiaries themselves will increase the number of agents involved in the process (organized civil society entities, city councils, legislative assemblies, etc.), and will reduce the discretionary nature of those who currently make these decisions, in a top-down process, minimizing political interference and meddling with the aim of obtaining undue financial gain;
4. The projects and programs included in the FDM-M and FDM-E must be aligned with the common objectives and competencies of the Federal Government and the beneficiary entities;
5. The projects that involve engineering works will only be included in the list after conception studies and project alternatives have been carried out with the objective of minimally describing and justifying the solution adopted;[31]
6. The budget guidelines laws of each federal entity should establish maximum global financial limits for the funds, such as a percentage of the net current revenue, for example, as a way to avoid lists of unrealistic demands or that do not correspond to the ranking of the community's real priorities, or that are incompatible with the operational and funding capacity of the federal entity;
7. The projects and programs in the funds must be registered in the System for the Management of Agreements and Pass-through Contracts (SICONV), the system currently used by the Federal Government to receive, evaluate, monitor, and online rendering of accounts of the resources transferred to the Federation units and private entities;
8. Because they are multi-sector funds, all the ministries and agencies of the Federal Government can allocate resources to them as a way to integrate the national priorities defined by them with the effective priorities of each member of the Federation;
9. The transferring agencies that decide to attend the projects on the priority list will register this decision in SICONV in two moments: first, with the forecast of the global budget allocation for the fund, of an estimated nature; and second, with the definition of the projects to be contemplated and executed in accordance with the physical-financial schedules registered in the system, moment from which such projects will acquire the status of compulsory execution;

31 Interministerial Ordinance 424, of 2016, art. 1, XIII - design and project alternatives study: technical documents used to describe the alternatives studied and justify the engineering solution adopted, based on technical, economic, social and environmental aspects

10. The resources destined to the FDM-M and FDM-E, after the definition of the projects to be executed, will be automatically released and will not be subject to contingencies or other fiscal restrictions by the Federal Government, in order to respect intergovernmental planning and to avoid the interruption of projects due to an interruption in the financial flow;
11. The automatic releases and the provisos to contingency applied to the funds are similar to what already occurs today with several legal transfers or expressly provided by the LDOs, as provided in § 2 of art. 9 of Complementary Law #101 of 2000 (LRF);[32]
12. Automatic release will not mean a greater plastering of the federal budget, since the approval of the projects to be executed will depend on a unilateral and discretionary act of the transferring agency, an opportunity in which it will take into consideration the relevant budget restrictions in that fiscal year; it is, in fact, a criterion for prioritizing public policies and strengthening intergovernmental public planning;
13. Once the financial resources have been transferred to the FDM-M and FDM-E, they will definitively belong to the receiving entity, and it is up to the internal and external control organs, in each level, to exercise the inspection to guarantee the correct application of the public resources transferred;
14. The incorporation of the transferred resources to the beneficiary's assets, at the time of the transfer, would eliminate the problem of the rendering of accounts having to be presented to the federal agency that transferred the resources (art. 70 of CF/88) and which led to the institution of the current centralizing model that incurs all the problems and deficiencies cited in this work;
15. The new model would be very similar (but with gains, by organizing, systematizing, and expressly indicating the projects to be benefited, integrating them with federal public policies) to the Special Transfer modality, instituted by EC #105/2019, which authorizes the definitive transfer of the amounts corresponding to the individual amendments destined to states, Federal District, and municipalities without the formalization of agreements or similar contracts (PIX amendments);
16. In order not to punish the local communities by depriving them of essential projects and services, through the fault or omission of bad managers, who should be reached, held responsible and penalized by other means, the transfer of resources to the funds will

32 Art. 9 If it is verified, at the end of a bimester, that the revenue realization may not allow for the fulfillment of the primary or nominal result goals established in the Fiscal Goals Annex, the Powers and the Public Ministry will promote, by their own act and in the necessary amounts, in the thirty following days, limitation of commitment and financial movement, according to the criteria established by the budget guidelines law.

.....

§ Expenses that constitute constitutional and legal obligations of the entity, including those aimed at debt service payment, those related to innovation and scientific and technological development funded by a fund created for this purpose, and those reserved by the budget guidelines law, will not be object of limitation.

not depend on the compliance of the benefitted public entity, not requiring from it any certificates or proof of regularity in relation to taxes or other legal obligations, as already occurs with the imposed parliamentary amendments;[33]

17. The federal funds transferring agencies will be responsible for verifying, only, if the objectives intended by the transfers have been achieved (health center built, sanitation work done, sports gymnasium implemented, people attended to, etc.) in order to monitor the result and the achievement of the goals established in the public policies of each ministerial portfolio and not to certify the legality of the application of funds, a task that is the responsibility of the internal and external control organs of the entity;

18. The entity that benefits will be free to reallocate the resources among the undertakings on the list of priorities as a way of favoring those that are more urgent or present conditions for a faster start or execution in relation to the others, except for the imposed parliamentary amendments that specify the projects to be contemplated;

19. This reallocation freedom will have the objective of privileging the ends, that is, the fulfillment of the public purpose of the expense, which is, the availability of the public service or equipment to the population in the shortest time possible, at the lowest cost, and not overvaluing the middle activities or the formalities of the process;

20. Therefore, if the funds intended for the construction of a sports court were regularly and legally applied in the execution of another priority, such as a health center, for example, there is no need to talk about irregularities, rejection of the[34] accountability or even an imputation of administrative improbity[35] or the commission of a crime by the manager,[36]

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33 Art. 166
§ When the mandatory transfer from the Federal Government for the execution of the program provided for in §§ 11 and 12 of this article is destined for the States, the Federal District and the Municipalities, it will not depend on the compliance of the recipient federative entity and will not integrate the calculation base of the net current revenue for the purposes of applying the limits of personnel expenditure dealt with in the caput of art. 169.

34 Ordinance 424/2016
Art. 62 The rendering of accounts will be composed, besides the documents and information registered by the grantor in SICONV, of the following:
I - Object Fulfilment Report;
II - declaration of the instrument's objectives achievement;
§ The Object Fulfilment Report must contain the necessary subsidies for the manager's evaluation and manifestation as to the effective conclusion of the object agreed upon.

35 Law No. 8.429/1992
Art. 10 - It constitutes an act of administrative improbity that causes damage to the public treasury any malicious action or omission that effectively and demonstrably results in asset loss, embezzlement, appropriation, misappropriation or dilapidation of the assets of the entities referred to in Art. 1 of this Law, notably
IX - ordering or permitting the execution of expenses not authorized by law or regulation;

36 Decree-Law 201/1967 provides on the responsibility of Mayors and Councilmen. The following are crimes of responsibility of Municipal Mayors, subject to judgment by the Judiciary Branch, regardless of the opinion of the City Council: 1 - Employ subsidies, aid, loans or resources of any nature, in disagreement with the plans or programs to which they are destined;
The Decree-Law nº 2.848/1940 (Penal Code), deals in Chapter IV, Crimes Against Public Finances, in articles 359-A to 359-H: Unauthorized expenditure order Art. 359-D. Ordering expenditures not authorized by law: Penalty - reclusion, from 1 (one) to 4 (four) years.

as occurs in the model currently in force, once the public purpose of the expense was achieved and the legal formalities for its execution were observed;

21. Voluntary transfers of resources in Application Modalities 30 - States and 40 - Municipalities, whether originating from parliamentary amendments or carried out directly by the Executive Branch, would now be made exclusively to the FDM-M and FDM-E, specifying or not the project to be benefited;[37]

22. The transfers in Application Mode 50 - Private non-profit institutions would also be made directly to the FDM-M and FDM-E, the subnational entity being responsible for articulating the local network of charities[38] and the civil society organizations[39] according to local peculiarities and community needs;

23. The subnational entities, for knowing and being close to the most acute social problems of their communities, will certainly be able to supervise and monitor more efficiently than the transferring agencies based in Brasilia the support to projects in the areas of culture, education, sports, agriculture, social assistance, etc. carried out in partnership with the network of private non-profit institutions that currently operate in these sectors;

24. The federal budget laws will not specify or individualize the projects served in Application Modalities 30 - States and 40 - Municipalities, restricting themselves to naming, in each

37 Art. 7
.....
§ 6º The Modality of Application - MA indicates if the resources will be applied:
I - directly, by the unit that holds the budget credit or, as a result of budget credit decentralization, by another agency or entity that is part of the Fiscal Budget or of Social Security;
II - indirectly, by means of transfer, by other levels of government, their agencies, funds or entities, or by private entities, except in the case foreseen in item III; or
III - indirectly, by delegation, by other federal entities or public consortia for the application of resources in actions that are the exclusive responsibility of the Federal Government, especially in cases that imply preservation or increase in value of federal public assets.
§ The specification of the modality mentioned in § 6º will observe, at least, the following details:
I - Transfers to States and the Federal District (MA 30);
II - Transfers to Municipalities (MA 40);
III - Transfers to Private Non-Profit Institutions (MA 50);
IV - Transfers to Private Institutions for Profit (MA 60);
V - Direct Applications (MA 90); and

38 Complementary Law no. 187, of 2021, Art. 2 Beneficiary entity, for the purposes of compliance with this Supplementary Law, is the private legal entity, non-profitable, that provides services in the areas of social assistance, health, and education, thus certified in the form of this Supplementary Law.

39 Law 13.019, of 2014: Art. 2 For the purposes of this Law, it is considered:
I - civil society organization:
a) private non-profit entity that does not distribute among its partners or associates, counselors, directors, employees, donors or third parties any results, surplus, operational surplus, gross or net, dividends, exemptions of any nature, participations or portions of its assets, obtained through the exercise of its activities, and that applies them integrally in the accomplishment of the respective social objective, immediately or through the constitution of an equity fund or reserve fund;
b) the cooperative societies foreseen in Law nº 9.867, of November 10, 1999; those integrated by people in situations of personal or social risk or vulnerability; those reached by programs and actions to fight poverty and generate work and income; those focused on fomentation, education, and training of rural workers or training of technical assistance and rural extension agents; and those enabled to execute activities or projects of public interest and of a social nature.
c) religious organizations that are dedicated to activities or projects of public interest and social nature that are different from those intended for exclusively religious purposes;

transferring agency, the titular federative entity and the respective FDM-M or FDM-E, as the case may be; the identification of the projects awarded will be made exclusively in SICONV;

25. Parliamentary amendments will only be able to allocate resources to projects classified as priority by the federated units and registered in the SICONV, and the execution of those originating from individual amendments and those from state legislatures will be mandatory, as it happens today;

26. The annual accounts to be presented by mayors[40] and governors[41] and the respective prior opinions issued by the Audit Courts must expressly address the supervision of the application of federal resources destined to the funds as well as the effectiveness of these transfers;

27. The absence of this information in the rendering of accounts and in the prior opinions, without justification, may be cause for preventing new transfers of federal resources to the FDM-M and to the FDM-E.

6 Conclusion

This study verified that the growing empowerment of the National Congress to alter the Annual Budget Bill (PLOA) is materialized in the secret budget, either in the institutionalized form recently declared unconstitutional by the STF, or veiled, as seen in this work, in the imposed parliamentary amendments and the mechanism currently in place to make financial transfers to states, Federal District and municipalities through agreements and transfer contracts.

This protagonism of the Parliament has decisively contributed to the fragmentation and inefficiency in the planning and execution of public policies and the misuse of public resources by facilitating the action of lobbies interested in private gains, besides hindering the achievement of the common objectives of the Federation, foreseen in art. 23 of the Federal Constitution (CF/88).

The analysis identified and revealed several dysfunctionalities of the current model of resource transfers to subnational entities and private non-profit organizations, making it excessively slow, not very efficient and effective

40 Art. 31 - The inspection of the Municipality will be exercised by the Municipal Legislative Power, by means of external control, and by the internal control systems of the Municipal Executive Power, according to the law.
§ 1 The external control of the City Council will be exercised with the aid of the Audit Courts of the States or the City or the Councils or Audit Courts of the Municipalities, where they exist.
§ The prior opinion, issued by the competent body on the accounts that the Mayor must render annually, will only cease to prevail by a decision of two thirds of the members of the Municipal Council.

41 Art. 75 - The rules established in this section apply, as far as applicable, to the organization, composition, and inspection of the Audit Courts of the States and the Federal District, as well as the Audit Courts and Councils of the Municipalities.

The protagonism and empowerment of the Parliament can be seen as a response to the discretionary nature of the President of the Republic in releasing or not budget funds, especially those resulting from parliamentary amendments.

Although the Parliament's competence to amply amend the budget bill is questionable, as it does today, given the provisions of § 3 of art. 166 of the Constitution that restricts changes related to errors and omissions, it is not credible to believe in a change in this interpretation.

The recent decision of the STF, on 12/19/2022, which considered unconstitutional the amendments of the Rapporteur General, stating that the latter can only submit amendments to correct errors and omissions, reinforces the understanding expressed in this paper that the interpretation of the Parliament on its broad competence to re-estimate revenues and cancel programming contained in the PLOA is mistaken.

The STF's decision, however, is restricted to the amendments of the general rapporteurs, and does not reach the amendments presented by the sectoral rapporteurs, the revenue rapporteurs, and other actors with competence to do so, so the problem is only partially solved.

Even if the issue becomes judicialized with the aim of examining the matter more broadly, with a negative result for Parliament, it is most likely that it will opt to amend the Federal Constitution to ratify the current understanding, without ever renouncing the protagonism achieved.

In this context, the study concludes by presenting a new model for resource transfers to subnational entities with the objective of mitigating the current dysfunctionalities, stimulating and privileging local populations in the definition of priorities, strengthening local planning and independence, avoiding the concentration of powers in part of the parliament in the allocation of budget funds, and taking advantage of successful experiences of transfers, such as fund-to-fund and automatic legal transfers.

The proposed solution foresees the transfer of financial resources directly to specific funds (FDM-M and FDM-E) created to contemplate the list of priority projects and programs previously chosen, in an independent, open way, and agreed upon by the local players (organized civil society, mayors, governors, city councilmen, state and district deputies).

The new procedure would replace the current practice in which different actors (deputies, senators, benches, ministries) choose, in a personalistic, disjointed and pulverized way, and far from the communities to be benefited, the priorities to be contemplated in the Federal Government's annual budget laws.

Another change suggested concerns the alteration in the responsibility for the inspection of the resources transferred, which today is the responsibility of the transferring agencies, which would become the responsibility of the internal and external control agencies of the subnational entity receiving the resources.

Shifting the responsibility to the beneficiary entity would be an improvement over the recent change introduced by EC #105/2019, which authorized the transfer of the amounts corresponding to the individual amendments intended for states, Federal District, and municipalities (Special Transfer) without the formalization of covenants or similar contracts, and without any link to a project or activity (PIX amendments).

An analysis of the annual balance sheets of the municipalities reveals that the amount of funds they receive each year from voluntary transfers represents less than 1% of their total budget revenues.

Thus, the argument that the municipalities do not have the technical and organizational capacity to apply the resources that originated in transfers from the federal level does not prosper, because if they do not have it for federal resources they will not have it either to apply those collected in their level of competence and that give them the financial autonomy expressly granted by CF/88.

Art. 70 of CF/88, when demanding the correct application of public resources, refers to all resources, whether they belong to the federal, state or municipal level. One does not require more care and attention than the others because they all have the same nature and are subject to the same constitutional requirements.

The proposal that defines that parliamentary amendments will only be able to allocate resources to projects classified as priority by the federated units and registered in the SICONV, with mandatory execution of those originating from individual amendments and from state benches, as it occurs today, would improve the budget process by eliminating the secret budgets, whether in the institutional form or in the veiled form, the PIX amendments, and all the arsenal of complex and bureaucratic procedures adopted today to control each parliamentary amendment.

In summary, the study, in an objective and pragmatic way, presents a diagnosis based on the analysis of a factual situation in which inefficiencies, dysfunctionalities, and negative effects of the analyzed phenomenon are evidenced.

The suggestion for improvement presented is innovative in several dimensions, mainly because it corrects distortions in the current budget and breaks the current paradigm that centralizes actions in the federal government, transferring them to the federated units, with a clear strengthening of their autonomy, representing a true redemption of the division of competencies consigned in the Magna Carta of 1988.

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