

THE MODERNISATION PROJECT FOR EXTERNAL CONTROL OF REGULATION AND RISK ANALYSIS OF INFRASTRUCTURE REGULATION AGENCIES IN BRAZIL

The Brazilian Court of Audit (TCU) developed the “Modernisation Project for External Control of Regulation”, financed/funded by the Inter-American Development Bank (IDB) and technical support provided by the Getulio Vargas Foundation.

The need for a specific project in the area of regulation control arose after identifying opportunities for advancing the work that was being carried out, not only in areas already under TCU’s oversight but also regarding new objects of external control of state regulatory activities in the infrastructure area.

The project was created aimed not only for diagnosing actions of TCU performance and that of regulating agencies but also for development and sustainability actions of the work processes created or improved after implementation of the foreseen products.

The goal of the diagnosis products was to register the work processes as well as the methods and techniques currently used by TCU. By comparing this information and identifying the objects of control mapped in the regulating agencies, one can propose improvements or new approaches for TCU’s performance in control of regulation of public services.

Risk analysis of the regulating agencies of infrastructure services is part of the effort to diagnose the performance of these agencies. In order to carry this out, TCU, with the support of the Getúlio Vargas Foundation, developed a methodology to register the processes, identify risk events and classify these events according to the criteria of probability, materiality and relevance.

The methodology is based on the participation of different levels of decision of the agencies visited and adopts mechanisms of validation of gathered information. The initial presentation of the work, given to the directors of the agencies, emphasises the importance of the participation of the technical staff and the support of the directors so that the work can register relevant information. After the board of directors commitment, it becomes possible to raise intended analyses.

The result obtained with this effort produces a scenario that enables identification of the levels of risk to which the regulating agencies are exposed, by macro-process, by process and by regulatory objective. This information becomes relevant for control considering it enables directing the audits towards areas of greater impact.

The development products had as an objective the future performance of TCU in the area of regulation control and expect the creation of methods and techniques that will be used to make possible a more comprehensive and effective performance in regulation control. The choice of new methods and techniques for regulation control is based on the contrast between the knowledge that exists in TCU and the challenges identified through knowledge of the areas that are more exposed to risk. Based on this TCU has developed methods and techniques for the external control of Private Public Partnership contracts; for the financial and economic regulation of railway and ports systems; and systematised knowledge on the regulation of competition and oversight of the remuneration basis of the energy sector in an environment of asymmetric information.

The sustainability of the actions of the Project will be reached by the strengthening of TCU relations with the target audiences who are interested in the field/area of regulation, as well as through the strategy of gathering and treatment of the data necessary for external control of the regulating agencies. For this purpose, we foresee carrying out a diagnosis of target audiences and implementing a Centre for Study and Control of Regulation – CECR.

With the implementation of the “Modernisation Project for the External Control of Regulation” we propose to create within TCU the necessary professional abilities and technical infrastructure to adopt a comprehensive oversight system of processes of delegation/assignment of public services focused on external control of the regulator. Aside from this, we expect subsidy in order to carry out a direct and critical analysis of the performance of delegated economic agents in aspects related to the quality of the services delivered, to the economic-financial balance of the contracts and to other factors that allow a more comprehensive understanding

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of the political, economic, and operational model adopted to deliver the public services that are the object of state delegation.