OECD Public Governance Reviews

OECD Integrity Review of Brazil

MANAGING RISKS FOR A CLEANER PUBLIC SERVICE

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BETTER POLICIES FOR BETTER LIVES

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Foreword

Over the past decade the Federal Government of Brazil has undertaken a series of reforms of its public sector. Enhancing public governance is a key element in the country's political reform agenda. They aim at making government more cost-effective, improving accountability and preventing corruption.

This Public Integrity Review of Brazil assesses the implementation and coherence of instruments, processes and structures to safeguard integrity within Brazil's federal public administration. It is based on four sets of policy principles developed by the OECD: the Principles for Managing Ethics in the Public Service, Guidelines for Managing Conflict of Interest in the Public Service, Principles for Enhancing Integrity in Public Procurement and Principles for Transparency and Integrity in Lobbying.

The review recognizes the important progress made so far and points at ways in which the Federal Government of Brazil could further reinforce its integrity and anti-corruption reforms by: *i)* integrating operational risk management as a core element of management responsibility, *ii)* ensuring adequate capability within public organisations to safeguard public resources; *iii)* enhancing efforts to assess the impact of integrity institutions and measures; and *iv)* increasing co-ordination at the policy and implementation levels in order to better develop a collective commitment.

This report also underlines the importance of a comprehensive approach that examines issues of integrity across different parts of the public administration. Three case studies – on Brazil's federal tax administration, Family Grant and National STD/AIDS Programmes – demonstrate that there are significant differences in the implementation of integrity measures within individual public organisations. In parallel with formulating government-wide initiatives, central integrity authorities should focus on providing more practical "how to" guidance and tools to provide capability in individual public organisations. Moreover, these central authorities have a critical role in monitoring implementation.

The significance of this report is global. This is the first public sector integrity peer review of a G20 country. It is part of the OECD contribution to implementing the G20 Anti-Corruption Action Plan agreed at the Seoul Summit in November 2010. It is also complementary to other activities in support of international and regional conventions against corruption. Last but not least, Brazil's willingness to be reviewed by its peers on an important systemic issue highlights its growing role and profile in international debates and decision making processes.

The report embodies the ongoing engagement between the OECD and Brazil in the field of public governance. It follows three previous reviews of Brazil on Public Budgeting (2003), Regulatory Reform (2008) and Human Resource Management in Government (2010). As an active participant in the OECD Public Governance Committee, Brazil plays a key role in building stronger frameworks for good governance. All these efforts contribute to our common goal of better policies for better lives.

Angel Gurría

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Table of Contents

Assessment and proposals for action **15**

Introduction 17
Assessments 19
Proposals for action 24
Management and consultation 38

Chapter 1 **Overview 49**

Introduction 50
The federal government 50
Central integrity actors within the federal public administration 56
National Strategy against Corruption and Money Laundering 71
Oversight by other branches of the federal government 73
Oversight by non-governmental actors 87

Chapter 2 **Promoting transparency and citizen engagement 107**

Introduction 108
Transparency in the management of public finances 110
Transparency in service delivery and broader government operations 124
Citizen engagement in oversight and direct social control 139
Conclusions and proposals for action 153

Chapter 3 **Implementing a risk-based approach to internal control 173**

Introduction 174
Internal control 177
Professional and independent internal audit 194
Conclusions and proposals for action 215

Chapter 4 **Embedding high standards of conduct 225**

Introduction 226
Developing systems for promoting standards of conduct 227
Effectively guiding and assessing standards of conduct 249
Conclusions and proposals for action 266
1. Ethical standards for public service should be clear 271
2. Ethical standards should be reflected in the legal framework 271
3. Ethical guidance should be available to public servants 271
4. Public servants should know their rights and obligations when exposing wrongdoing 271
5. Political commitment to ethics should reinforce the ethical conduct of public servants 272
6. The decision-making process should be transparent and open to scrutiny 272
7. There should be clear guidelines for interaction between the public and private sectors 272
8. Managers should demonstrate and promote ethical conduct 272
9. Management policies, procedures and practices should promote ethical conduct 272

10. Public service conditions and management of human resources should promote ethical conduct 273
11. Appropriate procedures and sanctions should exist to deal with misconduct 273

Chapter 5 **Enhancing integrity in public procurement 291**

Introduction 292
Public procurement developments in Brazil 294
Transparency throughout the public procurement cycle 300
Measures to prevent waste and corruption by officials and suppliers 311
Strengthening capability of the procurement system 324
Conclusions and proposals for action 336
Transparency 343
Good management 343
Prevention of misconduct 343
Accountability and control 344
Transparency, control and accountability are being reinforced… 345
…but the government must remain vigilant in managing operational risks 346

Annex

Annexes to the main report are available online at the links below:

Annex A. Secretariat of Federal Revenue

http://dx.doi.org/10.1787/888932466595

Annex B. Family Grant Programme

http://dx.doi.org/10.1787/888932466614

Annex C. National STD/AIDS Programme

http://dx.doi.org/10.1787/888932466633

Figures

Figure 1.1. Number of federal public officials in the executive branch of government....55
Figure 1.2. Share of public sector employees at different levels of Government in Brazil and select federal countries....55
Figure 1.3. Organisation chart of the Office of the Comptroller General of the Union....58
Figure 2.1. Risks of citizen engagement facing governments in OECD member countries, 2009....109
Figure 2.2. Budget transparency in Brazil and select countries....111
Figure 2.3. Use of Brazil's Transparency Portal....114
Figure 2.4. Growth of ombudsman units within Brazil's federal public administration....129
Figure 2.5. Reports received by Brazil's Office of the Ombudsman General of the Union and ombudsman units....130
Figure 2.6. Civil society participation in Brazil's national councils, 2007....141
Figure 2.7. National conferences in Brazil....145
Figure 3.1. Evolution of general government spending in Brazil....175
Figure 3.2. Evolution of Brazil's federal public administration's back office financial management and accounting systems....183
Figure 3.3. Data and reporting flows within Brazil's federal public administration....184
Figure 3.4. Secretariat of Federal Internal Control audits....202
Figure 3.5. Salaries of federal internal auditors (financial and control analysts) in comparison to federal tax officials (fiscal auditors)....209
Figure 4.1. Evolution of core public service principles in OECD member countries....229
Figure 4.2. Do public organisations have routines for identifying areas, processes or functions susceptible to misconduct?....236
Figure 4.3. Does an ethics committee exist in accordance with federal government rules?....242
Figure 4.4. Is the work plan of the ethics committee housed in the planning of the organisation?....243
Figure 4.5. Ordinary process for investigation of ethical breaches within Brazil's federal public administration....247
Figure 4.6. Ordinary procedures for investigating administrative misconduct within Brazil's federal public administration....248
Figure 4.7. Have public organisations established channels for officials to receive guidance on the application of standards of conduct in specific situations?....253
Figure 4.8. Is observance with standards of conduct monitored by public organisations?....254

Figure 4.9. Is the degree of knowledge of standards of conduct by public officials measured by public organisations?....254
Figure 4.10. Administrative disciplinary procedures in Brazil's federal public administration....256
Figure 4.11. Confidential information disclosures submissions by Brazil's high public officials....259
Figure 4.12. Do public organisations use indicators to monitor the ethics management practices?....265
Figure 5.1. Size of public procurement markets in Brazil and select countries, 2008....292
Figure 5.2. Trends in Brazil's general government investment....295
Figure 5.3. Increase in Brazil's general government investment relative to 2009 levels....296
Figure 5.4. Brazil's federal public administration contracts by supplier size....298
Figure 5.5. Comparison of procurement information provided by Brazil's various....305
Figure 5.6. Use of various procurement modalities in Brazil's federal public administration....309
Figure 5.7. Content and structure of a generic procurement plan....329

Tables

Table 1.1. System of executive power....51
Table 1.2. Structure of government....51
Table 1.3. Responsibility for policy and service provision across levels of government....52
Table 1.4. Federal ministries and secretariats of ministerial status....53
Table 1.5. Employment in the federal government of Brazil....54
Table 1.6. History of the Office of the Comptroller General of the Union....57
Table 1.7. Resourcing of the Office of the Comptroller General of the Union....59
Table 1.8. Resourcing of the Department of the Federal Police Department....66
Table 1.9. Resourcing of the Office of the Attorney-General of the Union....68
Table 1.10. Executive power to veto the budget approved by the legislature in Brazil and select countries....74
Table 1.11. Typologies of supreme audit institutions....80
Table 1.12. "Savings" attributed to Federal Court of Accounts' actions....81
Table 1.13. Process for formulating the judiciary's budget proposal in Brazil and select countries....83
Table 1.14. Citizens' initiatives to start legislation....93
Table 2.1. Main query options using Brazil's Transparency Portal....115
Table 2.2. Evolution of information available through Brazil's Transparency Portal....116
Table 2.3. Comparison of Brazil's budget execution monitoring portals....118
Table 2.4. Proactive disclosure of information by central government in Brazil and select OECD countries....124
Table 2.5. Plan of action for implementing Brazil's proposed freedom of information law....137
Table 2.6. Promulgation of freedom of information legislation in select countries....139
Table 2.7. Participation in Brazil's Eagle Eye on the Public Money Programme....149
Table 2.8. Participants in Brazil's Office of the Comptroller General of the Union student essay and drawing competitions....150
Table 3.1. Civil and common law administrative cultures in Brazil and select countries....175
Table 3.2. Internal control planning guidelines, as outlined in Brazil's 2001 "Internal Control Manual", issued by the Secretariat of Federal Internal Control....179

Table 3.3. Management systems within the direct federal public administration 182
Table 3.4. Expenditure using Brazil's Federal Government Payment Cards 187
Table 3.5. Office of Comptroller General of the Union 2006 risk mapping methodology 191
Table 3.6. Office of Comptroller General of the Union 2010 risk management methodology: management activities 192
Table 3.7. Office of Comptroller General of the Union 2010 risk management methodology: vulnerability indicators 193
Table 3.8. Level of centralisation of internal audit within the direct public administration in Brazil and select countries 196
Table 3.9. Organisation of the Secretariat of Federal Internal Control departments and divisions 197
Table 3.10. Brazil's three models of internal audit in the direct federal public administration 199
Table 3.11. Secretariat of Federal Internal Control audits 202
Table 3.12. 2011 programme audit prioritisation matrix of Secretariat of Federal Internal Control 203
Table 3.13. Secretariat of Internal Control special investigations of accounts 205
Table 3.14. Office of the Comptroller General of the Union's annual budget appropriation 210
Table 3.15. Staffing in internal audit units and teams within Brazil's direct federal public administration, 2009 210
Table 3.16. Advantages and risks of co-ordination and co-operation between internal and external audit 212
Table 4.1. Key legislation defining the standard of conduct for officials within Brazil's federal public administration 228
Table 4.2. Training for members of ethics committees in Brazil's federal public organisations 240
Table 4.3. Organisation of Brazil's Inspectorate General of Administrative Discipline, 2010 244
Table 4.4. Inspectorates within Brazil's federal public organisations, 2010 245
Table 4.5. Training of officials working in inspectorates and involved in administrative investigations 245
Table 4.6. Private interest disclosures for federal ministers or members of Cabinet in Brazil and select other countries, 2010 258
Table 4.7. Framework for assessing the functioning of a protected disclosure system 263
Table 5.1. Dedicated public-private partnership units in Brazil and select countries 297
Table 5.2. Non-legislative guidance on green procurement practices in Brazil and select countries, 2010 299
Table 5.3. Thresholds and minimum publicity time for public procurement notices in Brazil 301
Table 5.4. Thresholds for publicity for presentational and electronic reverse auctions in Brazil 302
Table 5.5. Public availability of procurement information in Brazil and select countries, 2010 304
Table 5.6. Services offered by centralised e-procurement portal in Brazil and select countries, 2010 306
Table 5.7. Most frequently used exemptions to competitive procedures in Brazil's federal public administration, 2009 310

Table 5.8. Private interest disclosures for procurement officials in Brazil and select countries, 2010 317
Table 5.9. Bid rigging training for public officials conducted by Secretariat of Economic Law, 2009-10 319
Table 5.10. Data template of Brazil's National Registry of Ineligible and Suspended Contractors 323
Table 5.11. Criminal sanctions in Brazil for breaches in procurement procedures 324
Table 5.12. Procurement Competency Framework – example of the Scottish Government Strategy Development and Market Analysis Competencies 327
Table 5.13. Examples of procurement process performance indicators 331

Boxes

Box 1.1. Plan for Institutional Integrity, Public Resource Control and Corruption Prevention, Office of the Comptroller General of the Union 60
Box 1.2. Department of Federal Police investigations of corruption in Brazil 65
Box 1.3. Permanent oversight activities by the National Congress 74
Box 1.4. Effectiveness of congressional commissions of inquiry in Brazil 76
Box 1.5. Violence against journalists reporting cases of suspected corruption within the public sector 90
Box 2.1. Brazil's Federal Ministry of Justice transparency page 119
Box 2.2. Civil society monitoring of budget transparency at the state and municipal level in Brazil 121
Box 2.3. Brazil's National Institute of Social Security's Charter of Citizens' Services 126
Box 2.4. Collecting data to effectively manage and track requests for information: the experience of Chile 132
Box 2.5. Brazil's National Electricity Agency Ombudsman 134
Box 2.6. Brazil's Council on Public Transparency and Combating Corruption: composition and functioning 142
Box 2.7. Brazil's participatory councils: empirical evidence from 5 500 municipal health councils 144
Box 2.8. Developing professional standards for citizen engagement: the experience of the Netherlands 147
Box 2.9. Perceptions of lobbying among decision makers in Brazil's federal legislative and executive branches 151
Box 2.10. OECD Principles for Transparency and Integrity in Lobbying 152
Box 3.1. The changing location of the policy and stewardship function for the internal control system of Brazil's federal public administration 180
Box 3.2. Operational risk management in Brazil's Federal Ministry of Social Security 190
Box 3.3. Empirical evidence on the effect of Secretariat of Federal Internal Control random audits 204
Box 3.4. Automated tracks on Federal Government Payment Cards and per diems and travel allowances 207
Box 3.5. Potential for select decentralisation of internal audit in Brazil's direct federal public administration 211
Box 3.6. Benchmarking the internal audit function: the experience of the Australian National Audit Office 213

Box 3.7. Findings of 2006 Federal Court of Accounts audit of the Secretariat of Federal Internal Control 215
Box 4.1. Examples of binding resolutions by Brazil's Public Ethics Commission: participation in external activities, receipt of gifts and managing conflict of interest 232
Box 4.2. Reviewing the strengths and weaknesses of post-public employment systems: "OECD Post-Public Employment Principles" 234
Box 4.3. Consultation in the development of an organisation-specific code of conduct in Brazil: the experience of the Office of the Comptroller General of the Union 237
Box 4.4. Ethics committees in Brazil's federal public organisations: statutory basis, composition and principles 239
Box 4.5. Brazil's Public Ethics Commission training activities for members of federal public organisations' ethics committees 240
Box 4.6. Syllabus of Brazil's Public Ethics Commission/Office of the Comptroller General of the Union management training and development course 251
Box 4.7. Public interest disclosures vs. whistleblowing vs. leaking 262
Box 5.1. The introduction of reverse auctions as a procurement modality in Brazil 303
Box 5.2. Content of electronic reverse auctions proceedings published on Comprasnet 307
Box 5.3. Process for granting exemption to competitive procurement modalities: the case of the Office of the Comptroller General of the Union 311
Box 5.4. Computer-assisted audit tracks used by the Office of the Comptroller General of the Union to identify possible procurement irregularities 314
Box 5.5. Examples of big rigging in Brazil 320
Box 5.6. Brazil's certificate of independent bid determination template 321
Box 5.7. Procurement Capability Reviews in the United Kingdom 332
Box 5.8. Examples of recent Federal Court of Accounts instructions on public procurement procedures 336

Assessment and proposals for action

Introduction

The federal government of Brazil has undertaken continuous reform over the past decade to enhance integrity and prevent corruption within its public administration. These reforms have focused on: *i)* increasing transparency and direct citizen oversight over public service delivery; *ii)* introducing a risk-based approach to internal control within public organisations; and *iii)* promoting high standards of conduct among federal public officials. These reforms have been shaped by earlier efforts to improve control over public expenditures and to modernise the public administration in the 1980s and 1990s respectively – as well as in response to a number of corruption cases that have captured public concern. The creation of the Office of the Comptroller General of the Union (*Controladoria-Geral da União*) and Public Ethics Commission (*Comissão de Ética Pública*) have been a core element of the federal government's strategy to enhance integrity and prevent corruption. Attention has also been directed at developing a co-ordinated approach as part of efforts to create a culture of integrity and prevent corruption. This has been demonstrated by the creation of national systems for administrative discipline, ethics management and organisational ombudsman (citizens' relations) function in 2007, 2008 and 2009 respectively. The fight against corruption within the federal public administration has also been incorporated, since 2007, into the National Strategy to Combat Money Laundering (*Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro*).

As with many OECD member countries that have made substantial efforts to develop institutions and mechanisms for enhancing integrity and preventing corruption in the public service, there is a growing demand in Brazil for evidence of impact. Assessing the impact requires more than information from perception indicators or a description of the legal framework, although these are often used and quoted as evidence. Such measures give little attention to the implementation and coherence of instruments, processes and structures. Nor do these measures provide evidence of whether government actions are responsive to the operational risks faced by individual public organisations and individual public officials.

The federal government of Brazil's agenda to enhance integrity and prevent corruption is particularly critical in order to address a number of challenges facing the country's public administration, including:

- **Managing risks associated with innovation in public service delivery.** Risks are inherent in many innovations in service delivery and, as with any actions undertaken by the government, require careful operational risk management. As in OECD member countries, the federal government of Brazil is formulating new and reshaping old policy instruments to support economic activity, spur a new and strengthened framework for well functioning markets. Risks can also arise from not taking opportunities to innovate.
- **Achieving value for money and minimising waste in government operations.** The 2009 OECD Economic Survey of Brazil noted that, despite considerable progress in many areas, there remains substantial scope for improving the cost effectiveness of government operations. Outcome indicators are not always commensurate with Brazil's high level of government-financed spending suggesting that service delivery is inefficient rather than under-funded, particularly in the case of education and health (OECD, 2009a).

- **Meeting expectations of citizens and reinforcing trust in public organisations.** Citizens expect public officials to serve the public interest with fairness and to manage public resources properly on a daily basis. Fair and reliable public services inspire trust and create a favourable environment for businesses, thus contributing to well-functioning markets and economic growth (OECD, 2000; OECD, 2005a). Better-educated and less deferential citizens are judging their governments both on their democratic performance and their policy performance (OECD, 2009b).

In light of these challenges and opportunities, the federal government of Brazil requested the OECD to undertake a Public Governance Review to: *i)* examine the functioning of structures, practices and procedures that have been established to enhance integrity and prevent corruption; and *ii)* identify areas where future attention could centre drawing upon recent experiences and good practice from OECD member countries. Brazil's willingness to step forward as the first country to undertake a Public Governance Review was widely appreciated and is a clear sign of leadership recognised by the OECD Public Governance Committee.

The review is supported by analysis of four main areas of focus: *i)* promoting transparency and citizen engagement; *ii)* implementing risk-based systems of internal control; *iii)* embedding high standards of conduct; and *iv)* enhancing integrity in public procurement. This was complemented by three case studies to highlight issues of integrity management at the level of individual public functions, organisations and programmes: *i)* the federal tax administration; *ii)* the Family Grant (a conditional cash transfer) Programme; and *iii)* the National STD/AIDS Programme. With national elections scheduled in Brazil during October 2010, the review was conducted during the first 9 months of 2010 to shape the policy agenda for the incoming administration. The findings of this report are also timely as Brazil's federal government prepares for the 2014 FIFA World Cup and 2016 Olympic Games. Both of these mega-sporting events involve significant amounts both of public and private resources and will focus the world's attention on Brazil.

While this report analyses the effort within the federal public administration (the machinery of the executive branch), efforts to create a culture of integrity and prevent corruption are also influenced by the legislature and judiciary. In this regard, it is prudent to note that a number of constraints exist within these branches of government and impact upon Brazil's efforts to create a clean public administration. For example, the ability of the National Congress to support accountability within the federal executive is undermined by weak scrutiny, despite adequate time for review, of management reports and external audit reports prepared by all federal public organisations and the Federal Court of Accounts respectively. Brazil's judiciary also faces a number of challenges, despite improvement in recent years following a comprehensive reform implemented in 2004. The judiciary is bureaucratic, slow and expensive, reflected in an enormous backlog of cases and in extremely lengthy judicial procedures. These constraints are duly acknowledged but are beyond the scope of this report.

Progress made by the federal government of Brazil during the past decade provides a sound basis for advancing integrity management in the coming years. Moving forward, the federal government of Brazil could reinforce reforms to enhance integrity and prevent corruption by focusing on the following four core messages:

- **Integrate risk management** as a core element of management responsibility in order to promote integrity and prevent misconduct, waste and corruption.

- **Ensure adequate capability** within institutions supporting integrity in order that they function in accordance with their respective intended objectives.
- **Enhance efforts to assess** the implementation and impact of integrity institutions and measures for continuous policy learning and adjustment.
- **Increase co-ordination** at policy and implementation levels in order to develop a collective commitment for enhancing integrity and preventing misconduct.

Translating these messages into concrete policy and management actions, the second part provides detailed proposals for action across the review's four areas of focus:

- **Promoting transparency and citizen engagement** with reference to freedom of information, proactive transparency and creating a basis for direct social control.
- **Implementing risk-based internal control** in order to mitigate operational risks and provide reasonable assurance of integrity within public organisations.
- **Embedding high standards of conduct** to guide the behaviour of federal public officials in line with the purpose of the organisations in which they work.
- **Enhancing integrity in public procurement**, as a strategic instrument for governments to deliver public services, while preventing waste and misconduct.

Assessments

Integrate operational risk management as a core responsibility of management in order to promote integrity and prevent misconduct and waste

All public organisations face operational risks: both from internal factors (*e.g.* attributed to excessive discretion in decision-making processes, complex and decentralised service delivery arrangements, etc.) as well as external factors (*e.g.* new legislation and standards, changing citizens' expectations, etc.). Operational risk management means having in place a systematic process and adequate capability (*e.g.* knowledge, resources, etc.) to identify, (re-)evaluate and mitigate operational risks in a cost-effective manner – elimination of operational risk is generally not a practical goal. Managing operational risk supports effective public service delivery, improved managerial accountability, and trust in public organisations. It also supports better resource allocation and compliance outcomes. If not appropriately managed, these risks can affect the effectiveness and efficiency of public service delivery and public trust in government. Decision makers and public managers must understand, recognise, and be rewarded for using operational risk management in their day-to-day activities. In order to be effective, however, operational risk management needs to be integrated into other management systems and feed directly into decision making and performance evaluation. This includes in the formulation of new or amendments to existing policies and programmes, and the creation of new and reorganisation of existing functions and responsibilities.

Brazil has during the last five years begun to introduce operational risk management within the federal public administration. Operational risk management methodologies were developed by the Office of the Comptroller General of the Union and piloted in a small number of federal public organisations during 2006. Progress is more advanced within a number of organisations of the indirect public administration. For example, Brazil's public commercial banks have introduced operational risk management

influenced strongly by international obligations of the Basel Committee on Banking Supervision. Some of these organisations of the indirect public administration have been recognised internationally for their good practices in operational risk management. However, in the majority of cases, operational risk management remains largely at a conceptual stage. Although the experience of and lessons learnt by organisations of the indirect public administration is differentiated by their commercial operations, it can provide valuable input to the creation of a risk management policy and its application in other public organisations. To date, however, there has been limited exchange between organisations of the direct and indirect public administration on operational risk management.

Effective integration of operational risk management in Brazil's federal public organisations will require strong leadership by decision makers and public managers. Leadership is essential to overcome a natural resistance to accept operational risk management as an appropriate allocation of limited resources and concerns over the political consequences of explicitly recognising and weighting operational risk (Bounds, 2010). Resources are necessary not only to identify risks in a systematic and proactive manner but also to develop the necessary knowledge management systems to support the identification and evaluation of risks and the efficacy of mitigating risk actions. Experience from OECD member countries, as well as organisations of Brazil's indirect federal public administration with experience in risk management, suggest that it can take between three and five years to establish the foundations for a positive risk management culture. Even then, resourcing operational risk management can be difficult to sustain as, if done well, it is an activity that will generally not be visible for all to see – and because unsuccessful attempts to mitigate risk will attract the most attention. Failure to sustain operational risk management is, thus, in itself a major risk for public organisations.

Two additional challenges exist facing the introduction of risk management within Brazil's federal public administration. First, and because of the centralisation of internal control for the federal public administration within the Office of the Comptroller General of the Union, management in some federal public organisations does not take an active role in creating and maintaining a sound system of internal control. Experience from OECD member countries in implementing risk management necessitates ultimate accountability of management for internal control. Second, internal control is framed as a separate series of reform from general management reforms. As such, in some cases they work in parallel but separate from one another. This is created in part by the separate policy and institutional responsibilities between the Office of the Comptroller General of the Union with the Federal Ministry of Planning, Budget and Management, respectively. In both cases, the introduction of risk management and strengthening of internal control should be conducted in concert with management reforms more generally, in order to position management as responsible for maintaining a sound system of internal control.

Ensure adequate capability within institutions supporting integrity in order that they function in accordance with their respective intended objectives

The performance of the institutions supporting integrity, and their ability to meet the expectations of citizens and the strategic objectives of the administration, depends heavily on adequate capability. Capability is broadly defined as the totality of the strengths and resources available within the machinery of government. It refers to the organisational and technical systems as well as individual competencies that create and implement policies. There are no universal rules about what level of capacity is necessary to deliver

a certain level of functioning of institutions and measures. Nor is improving capability a goal in itself; it is a means to achieving better integrity outcomes. It requires public organisations to develop and assess strategies and policies to sustain improvements in capability over time, learning by doing and learning through collaboration with other integrity actors and stakeholders.

Brazil has established a large number of integrity units within the federal public administration. For example, the numbers of organisational ombudsman units have increased from 40 to 157 between 2002 and 2010 and by the end of 2010 all federal ministries were expected to have their own ombudsman unit. There are over 200 ethics committees and 30 inspectorate units investigating ethical breaches and administrative misconduct. These are in addition to the central integrity actors such as the Office of the Comptroller General of the Union, the Public Ethics Commission, the Department of Federal Police, and the Office of the Federal Public Prosecutor. Whereas the central integrity actors set integrity policies and standards, public organisations are responsible for effectively implementing them.

In many cases, the creation of these integrity units within federal public organisations has been driven by the need to fulfil statutory requirements. While creating structures provides visible support for reforms, it does not necessarily mean that they are well integrated into the functioning of a public organisation as a whole. Nor does it mean that they always granted adequate capability to fulfill their functions. Assessment activities undertaken by the federal government, however, evaluate whether public organisations have indeed established the minimal requirements to fulfil the statutory requirements rather than evidence of the adequate functioning of integrity units or even perceived and actual effectiveness of their activities.

Ensuring adequate capability within integrity institutions will require sustained efforts to build capacity, to provide adequate tools, facilitate lesson learning and develop institutional knowledge. To date, a number of actions have been taken by central integrity actors to achieve this. For example, central integrity actors provide training for officials working on guiding, monitoring, and enforcing integrity measures, standardising administrative procedures for implementing and creating national networks for exchanging experiences. As part of these activities, central integrity actors may focus on identifying and communicating good practices to guide the activities of these respective integrity actors. Moreover, clear attention should be given to ensure that public officials posted within ethics committees, inspectorate generals and organisation ombudsman are not considered as career dead-ends but rather as developing competencies for their career development. There are several examples of innovations in this regard that serve to preserve the integrity of officials working in these positions and encourage the brightest to apply by giving priority in the official's next posting as an incentive and reward for officials working in these positions.

Enhance efforts to assess the implementation and impact of institutions and measures supporting integrity for continuous policy learning and adjustment

Good governance requires thorough assessment, and measures promoting integrity and preventing misconduct and waste are no exception (OECD, 2005b). It is critical that the federal public administration and individual public organisations move away from a general and static description of what integrity institutions are. In its place, attention needs to orientate towards data and benchmarks that capture factual knowledge on the

functioning and impact of these institutions and systems. Over time, this data can be used to track trends and enable policy makers and public officials to judge the effects of actions taken and to clearly identify steps that need to be taken in order to move forward. This requires public officials to assemble valid, reliable data and to assess and benchmark their performance with that of comparable public organisations. Integrity does not, however, automatically result from amassing more data or even from improving the frequency and quality of its analysis. Effective assessment requires careful attention to consider what dimensions of processes, outputs and outcomes to measure. It also necessitates clear and timely analysis from the public administration to decision makers to inform discussions and clarify options and potential consequences (OECD, 2009c).

The federal government of Brazil has already begun collecting and analysing standardised data related to input, processes, and outputs associated with select aspects of integrity management. For example, information on administrative disciplinary investigations and reports from citizens are well documented and analysed in many public organisations. This is, in part, led by efforts by Inspectorate General of Administrative Discipline and Ombudsman General of the Union, both within the Office of the Comptroller General of the Union. Annual surveys by the Public Ethics Commission also focus on monitoring issues of ethics management within public organisations. Together these constitute a good foundation for analysis and additional dimensions may be included in the data collection over time. In other cases, data is altogether lacking or simply not collated and analysed. For example, while procurement review and remedies are considered as slow and often misused by suppliers, there has been little collection of data to understand the heart of the problem as a basis for supporting training activities for procurement officials or changes in procurement rules and procedures.

An additional challenge facing the assessment of integrity management in Brazil is the fragmentation of assessment activities. Various units within the same public organisations collect information regarding the functioning of specific integrity management. For example, ethics committees have information on ethics investigations, The inspectorates have information on administrative investigations, the ombudsman on reports from the public, etc. These activities are, however, not typically co-ordinated and results assessed together with one another.

Moving forward, federal public organisations may focus attention on: *i)* incorporating existing results of individual assessments of integrity instruments into a broader framework to support accountability; and *ii)* refining and broadening existing integrity data and indicators to better capture the functioning and impact of integrity institutions and systems. The Office of the Comptroller General of the Union (and within it the Inspectorate General of Administrative Discipline, Ombudsman General of the Union and Secretariat of Corruption Prevention and Strategic Information) and the Public Ethics Commission are well positioned to lead efforts to build an assessment framework. This could subsequently be used to facilitate measured benchmarking of the implementation and impact of integrity instruments across the federal administration. Achieving this will also require greater co-ordination within public organisations to design a coherent integrity evaluation framework that provides credible and relevant data for policy makers and managers.

Increase co-ordination at policy and implementation levels in order to develop a collective commitment for enhancing integrity and preventing corruption

Collective commitment is necessary for the effective implementation, or operationalisation, of the government's goals. Achieving collective commitment does not necessarily mean consensus on a common approach, as the public organisations face different operational risks and have a different tolerance to risk because of their visibility and political significance. Decision makers and public managers therefore need to understand why they are being asked to work a certain way and the consequences if they are unable to do so (OECD, 2010a). Collective commitment can be strengthened through knowledge sharing, both within and across public organisations. Effective knowledge sharing can highlight innovations and good practices in relation to integrity management while, at the same time, demonstrating the importance of organisational-specific factors. There is no single one size fits all solution for all public organisations. Strong leadership from central authorities, and exemplary role set by political and administrative leaders, encourage public managers to commit and implement integrity-related reforms.

Central authorities play a critical role in supporting dialogue and exchange between public managers. Brazil has established central authorities in charge of different aspects of public management. For example, the Office of the Comptroller General of the Union is responsible for risk management, internal audit and transparency policies. The Public Ethics Commission is responsible for embedding high standards of conduct among public officials. The Federal Ministry of Planning, Budget and Management (*Ministério do Planejamento, Orçamento e Gestão*) is responsible for public management reforms in the areas of charters of service, public procurement, human resource management, as well as administrative back-office functions. The Federal Ministry of Finance (*Ministério da Fazenda*) is responsible for accounting standards and integrating financial and non-financial performance information. These activities are complementary to one another, and in some cases overlapping, in relation to efforts to enhance integrity within the federal public administration.

Brazil has also created many structures to facilitate co-ordination and communication within the particular organisation functions within federal public administration. For example, co-ordination and communication occurs through annual meetings of inspectorate generals, ethics committees and organisational ombudsman. Such meetings facilitate ongoing exchange and learning for officials working in these functions. In other cases these structures exist only on paper, for example the Commission for Co-ordination of Internal Control (*Comissão de Coordenação de Controle Interno*). Dialogue need not be across the entire federal public administration. Experience from OECD member countries suggests that sector-specific dialogue can be more effective at addressing the specificities of particular public functions. For example, some countries have identified commonalities between organisations and management cultures with enforcement powers, such as the tax administration, customs administration, border control, the police and security forces.

Moving forward, Brazil's central authorities may like to focus attention on co-ordination between central authorities of the federal public administration and across functional areas within individual public organisations. However, it is important that real collaboration happen rather than serve as a forum to collate and raise awareness of ongoing initiatives within the federal public administration. Collaboration need not only arise as a trickle-down effect from the national level. Individual public organisations can

take the initiative to improve co-ordination and communication between their ethics committees, inspectorate generals, internal audit and organisational ombudsman.

Proposals for action

This review is supported by analysis of four main areas of focus:

- promoting transparency and citizen engagement;
- implementing a risk-based approach to internal control;
- embedding high standards of conduct; and
- enhancing integrity in public procurement.

This part presents the proposals for action for the federal government moving forward.

Promoting transparency and citizen engagement

Promoting transparency and citizen engagement is considered essential for enhancing the accountability and external oversight of public organisations (see, *e.g.* OECD, 2001; 2003; 2005a; 2009b). In addition, the role of transparency and citizen engagement in fighting corruption is also recognised in international conventions against corruption.[1] Transparency provides citizens with the information they need to oversee and evaluate government decision making and public policies. Increasingly, OECD member countries are adopting proactive transparency measures to ensure that citizens get immediate access to public information and avoid the cost of engaging in administrative procedures to access the information. Citizen engagement can also create a shared responsibility for service delivery and a shared role for enhancing integrity. Together, transparency and citizen engagement can facilitate: *i)* better policy outcomes at lower costs; *ii)* higher compliance with decisions reached; and *iii)* equity in access to policy making and service delivery. It can also help to improve policy performance and fiscal legitimacy by helping governments to: *i)* better understand and respond to citizens' evolving needs; *ii)* leverage knowledge and resources from beyond the public administration; and *iii)* develop innovative solutions to policy problems and their implementation.

Transparency, while a necessary condition, is not sufficient to guarantee effective citizen engagement. Governments must invest in lowering barriers to engage the "willing but unable" and make engagement attractive to the "able but unwilling". Risks are also inherent in increasing transparency and citizen engagement; like any actions undertaken by the government, careful risk management is required. Possible risks include delays in public decision making, capture of processes by special interests, consultation fatigue and conflicts among participants. These risks can inadvertently undermine public governance and trust in government.

To date, promoting transparency and citizen engagement within Brazil has been achieved in the absence of comprehensive freedom of information legislation. Brazil is only now moving closer to a comprehensive freedom of information law with a bill under discussion within the National Congress. This bill was presented to the National Congress by the President of the Republic in 2009, replacing earlier proposals that were tabled in early 2000. The Office of the Comptroller General of the Union is also engaging the United Nations Educational, Scientific and Cultural Organisation to support the eventual implementation of a freedom of information law, though information about this

partnership was unavailable. In order to support the eventual implementation of a freedom of information law, the federal government of Brazil could consider the following proposals for action:

- Ensure the inclusion of an adequate transition period within the freedom of information bill. The government may consider, for example, phasing in the implementation of a freedom of information law by the level and size of government. This would allow time for local governments to establish the necessary capacity and to learn lessons from the central and other local governments. Such a phased implementation already exists for other transparency policies, for example, obligations for local governments to provide information electronically on budget execution (see Complementary Law no. 131/2009 amending Complementary Law no. 101/2000, "the Fiscal Responsibility Law"). This law, for example, gives 3 deadlines for the phased implementation of requirements for increased budget transparency: 1 year for states, the Federal District and municipalities with over 100 000 inhabitants; 2 years for municipalities with 50 000-100 000 inhabitants; and 4 years for municipalities with less than 50 000 inhabitants.
- Ensure adequate resources are allocated to prepare guidance materials for federal public organisations to consider when formulating their own policies and operating procedures with regard to freedom of information. Guidance material may address *i)* protocols and procedures for informing citizens of their rights; *ii)* the application of fees for citizens requesting information; and *iii)* the collection of data to review the implementation of freedom of information requirements. The Office of the Comptroller General of the Union has already started preparing a project together with the United Nations Educational, Scientific and Cultural Organisation focusing on preparing the federal public administration for the implementation of a law. These activities will happen over 2011 and 2012.
- Include records and archives management into internal audit activities as a means of preparing for an eventual freedom of information law. This may be done through the programme (performance) audits of organisations of the direct public administration by the Secretariat of Federal Internal Control. Brazil's centralisation of internal audit within the direct federal public administration could ensure the effective implementation of such a policy. The Secretariat of Federal Internal Control could also require this to be included in the Annual Plan of Internal Audit Activities of the audit units within organisations of the indirect federal public administration. The Secretariat of Federal Internal Control sets guidelines and approves the Annual Plan of Internal Audit Activities of the audit units within organisations of the indirect federal public administration.

Despite the absence of a freedom of information law, much progress has been achieved during the last decade – particularly in relation to transparency in public expenditure – through the implementation of Complementary Law no. 101/2000. This has been supported by the use of new technologies to provide free real time access to information through the Transparency Portal and transparency pages. In order to strengthen citizens' utilisation of information proactively made available, the federal government of Brazil could consider the following proposals for action by the Office of the Comptroller General of the Union:

- Support citizens to conduct additional analysis of government data through the Transparency Portal and other portals of the federal public administration. In the immediate period, the Transparency Portal and transparency pages may be changed to allow direct comparisons of expenditure data across years and to permit downloading of expenditure and revenue data, as is already the case for select data (*e.g.* government administrative agreements). In the medium term, attention could focus on developing more sophisticated online analytic tools. Experience has shown that online analytic tools can be more effective to facilitate participation and oversight than allowing citizens to download masses of data. Finally, non-financial performance data could be incorporated into the Transparency Portal. Such data already exists through the websites of some federal public organisations (*e.g.* social development, health) but it is also a focus of attention by the Secretariat of the National Treasury.

- Periodically survey citizens on their use of the Transparency Portal and transparency pages of the federal public administration. Electronic surveys could be sent directly to subscribers of the Transparency Portal direct mailing system (more than 30 000 users as of July 2010). This would allow assessment of existing users but not necessarily those that do not use the portal. Surveys directed at subscribers of the portal's direct mailing system could be complemented by partnering with other organisations that conduct annual household surveys of the use of e-government services or information and communications technologies more generally. Working in partnership has the potential of reducing the cost of surveys and also capturing the views of others that do not currently use, or are not necessarily aware of, the Transparency Portal.

- Augment the content of the transparency pages of federal public organisations to include other types of information. At present transparency pages include information on: *i)* budget execution; *ii)* procurement; *iii)* administrative contracts; *iv)* administrative and transfer agreements; and *v)* travel and per diem. This may be expanded to include, among other items: *i)* relevant laws and regulations; *ii)* Charter of Citizens' Services; *iii)* annual management reports; and *iv)* external audit reports. In addition, and in line with recommendations on Enhancing Integrity in Public Procurement, procurement and contract information may be accompanied with annual procurement plans and information on contract amendments above a particular threshold (defined as a share of the original price). This would support citizens to have a one stop repository of key information relating to accountability of individual public organisations.

- In the medium to long term, assess the possibility of streamlining and standardising the websites of federal public organisations to publish the information contained within the transparency pages on the main website. At present, the transparency pages are stand-alone websites separate from their respective federal public organisations. This creates parallel websites decidicated to public service delivery and accountability.

Since August 2009, all federal public organisations are obliged to provide clear information on their services, establish service standards and evaluate user satisfaction of their services through the creation of a Charter of Citizens' Services. In order to strengthen the effectiveness of these charters, the federal government of Brazil could consider the following proposals for action by the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Expand the content of charters to include a commitment to maintain professional excellence and high standards of conduct, the rights and obligations of citizens, information on channels available for complaints, compliments and feedback. This information is typically not included in the charters published to date but could help to create a more holistic understanding of the interaction between public officials and citizens.
- Encourage all federal public organisations to conduct a consultation process with different stakeholders when (re-)formulating and updating their charters. This can provide support in ensuring that: *i)* stakeholders are aware of their rights and obligations; *ii)* the charter is understood and considered relevant to their respective needs; and *iii)* the charter has been appropriately applied. In doing so, all necessary actions should also be taken to ensure the timely completion of a consultation process and amendment and/or revisions to the charter.
- Develop a good practice guide to help public officials implement charters and to highlight the experiences and lessons learned of other public organisations. A guide may include such topics as approaches to increasing awareness of charters among citizens and to assessing the implementation of service charters, etc. Good practices need not only originate from federal public organisations but also state and municipal public organisations, in Brazil or overseas. A large number of OECD member countries have developed charters and created their own good practice guides.
- Conduct periodic audits of the implementation of charters as part of responsibilities for ensuring compliance with the obligations of Federal Decree no. 6 932/2009 (establishing the obligation for federal public organisations to create charter). Audits may address the strategic commitment to implementing the service standards included within the charter and internal monitoring and reporting of performance against commitments in the charter.

In addition to the actions of the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union, the success of Charters of Citizens' Services requires effective implementation. In this regard, the federal government of Brazil could consider the following proposals for action by all individual public organisations:

- Develop protocols and procedures to inform citizens of information contained within the charter as a normal part of service delivery activities. To maintain a consistent and co-ordinated approach, consider that protocols and procedures relating to the charter also be incorporated into other communication and awareness-raising activities conducted by federal public organisations.
- Develop a systematic approach to internally monitor, evaluate and communicate the results of the implementation of charters, including publishing both quantitative and qualitative measures as part of annual management reports. To maintain a consistent and co-ordinated approach, consider aligning the evaluation of the charter's implementation with other evaluation activities.
- Place responsibility for the implementation of the charter in organisational ombudsman units (where they exist). These responsibilities may include, among others: *i)* evaluating the benefits of consultation with citizens and, where appropriate, engaging citizens and service users in the formulation of a charter;

ii) ensuring information on the service standards and the charter is effectively communicated to citizens at the point of service delivery, among others; *iii)* raising awareness of, and providing advice to, officials in all organisational units on how to apply the charter in their daily activities; and *iv)* monitoring conformity with service standards outlined in the charter and, where necessary, bringing it to the attention of management where improvements are needed.

There has been an expansion of the ombudsman function throughout the federal public administration since 2002, to provide a point of contact for citizens requesting information and expressing opinions and feedback about the conduct of service delivery. The number of ombudsman units increased from 40 to 154 between 2002 and 2010. The federal government intended that by end 2010 all federal ministries would have an ombudsman unit. In order to strengthen the effectiveness of the ombudsman function, the federal government of Brazil could consider the following proposals for action by the Office of the Ombudsman General of the Union:

- Develop common reporting procedures to facilitate aggregation of data to the Ombudsman General of the Union, in order to assess the functioning of ombudsman units within the federal public administration. Such information may include: *i)* the number of reports received; *ii)* the types of reports received; *iii)* breakdown by regional offices and/or programmes; *iv)* average time for handling responses; and *v)* types of responses provided. At present, data does not allow for a complete understanding of the effectiveness of the ombudsman function.
- Develop generic software for ombudsman units to collect, monitor and evaluate the handling of information requests and other interactions with citizens. This use of this software by the ombudsman units may be mandatory for those that may otherwise not have adequate capacity to develop their own such system. It could also establish minimum requirements for other federal public organisations with their own existing ombudsman case/data management systems. At present, case management data for the ombudsman units varies across the federal public administration and does not always capture dimensions that can help to assess the functioning of case management. Standardised software would allow the generation of more standardised ombudsman data and reporting among federal public organisations.
- Facilitate dialogue and exchange between the Office of the Ombudsman General of the Union and the Office of the Federal Public Prosecutor. The Office of the Federal Public Prosecutor's public-interest litigation function brings it closer to a classical ombudsman in OECD member countries. Dialogue and exchange may include such activities as: *i)* case management training for officials working in the ombudsman function; *ii)* standardisation of data and benchmarks relating to reports and citizens; *iii)* joint annual reporting of interactions with citizens; and *iv)* joint communication activities to inform citizens of their rights and the channels available to voice their concerns.

In addition to the actions of the Office of the Ombudsman General of the Union, the federal government of Brazil could consider the following proposals for action by all individual public organisations:

- Enhance the content of ombudsman reports to include more detailed information to issues by service area, organisational unit, response time, and response type

(*e.g.* released in full, denied in part, denied, no records, time extension, etc.). At present, case management data for the ombudsman units varies across the federal public administration and does not always capture dimensions that can help to assess the functioning of case management. Improved reporting would help Congress and citizens to better evaluate the functioning of organisations' ombudsman units.

- Include, in each avenue available to register complaints and suspected misconduct by public officials, an explicit statement that assures citizens of the confidentiality of information they provide and that they will not be discriminated against as a result of any complaint. At present there is no such explicit statement. The absence of such a statement may deter citizens from contacting ombudsman units within the federal public administration. In addition, it is critical that the content of any such explicit statement be incorporated into training activities and other guidelines for ombudsman officials. Raising an understanding among ombudsman officials is necessary for the effective implementation of any communicated commitment to confidentiality and unbiased treatment.

Citizen engagement in the accountability and control of federal government policies and programmes has been mainstreamed through councils and conferences within different policy sectors and at all levels of government. These forums provide a channel for citizens to directly participate in public policies. Councils focus on the design, implementation and monitoring of public policies. Conferences evaluate public policies and establish guidelines for improvement. In order to strengthen the alignment of citizen engagement with efforts to promote integrity, the federal government of Brazil could consider the following proposals for the Office of the Comptroller General of the Union together with the Office of the President of the Republic (Secretariat for Corruption Prevention and Strategic Information):

- Develop a framework for enhancing participation in policy making at the federal government level. This framework could identify both good management practices and policy interfaces across federal services, as well as create opportunities for cross-sectoral dialogue, for example by sharing lessons learnt across government.

Efforts have begun to create a sound legal framework for lobbying with an emphasis on openness and transparency with clear and enforceable standards. A bill is under discussion in the National Congress. The Council for Transparency and Combating Corruption is also debating how to address the issue of lobbying. In order to increase integrity and transparency in lobbying, and recognising the current proposals within the National Congress, the federal government of Brazil could consider the following proposals for action:

- Clarify public concerns regarding lobbying in order to understand properly the challenge in developing an appropriate framework for enhancing transparency and integrity in lobbying. Specific attention should focus on the administrative context of Brazil and not simply replicating the institutions and measures adopted in other countries. In this regard, attention should focus on the realities of a federalist state and presidential political system.

- Provide clear standards of conduct for public officials to guide their interactions with lobbyists and to manage possible conflicts of interest should they leave public office and become a lobbyist. Attention should be directed to ensure

complementarity between the bills on lobbying and conflict of interest to ensure that they adequately deal with post-public employment and possible "revolving door" situations, while not deterring highly qualified individuals from entering the public service.

- Clearly define the terms "lobbying" and "lobbyist" in the formulation of an eventual law on lobbying. Attention should focus on: *i)* what actors and activities are covered; and *ii)* providing proper descriptions of exclusions in line with the administrative context of Brazil. Vague and partial definitions of which actors and what activities are covered by the law could endanger the proper functioning of the law.
- Establish clear standards and procedures for collecting and disclosing information on lobbying. Disclosure requirements can generate a lot of information. However, an effective lobbying law should ensure that: *i)* collected information is relevant to the core objectives of ensuring transparency, integrity and efficiency; *ii)* demands for information are realistic in practical and legal terms. Core disclosure requirements should elicit information that: *i)* captures the intent of lobbying activities; *ii)* identifies its beneficiaries; and *iii)* points to those on the receiving end of lobbying. Supplementary disclosure requirements should take into consideration the legitimate information needs of public decision makers as well as facilitate public scrutiny. Moreover, to adequately serve the public interest, disclosures on lobbying activities should be made and updated on a timely basis.
- Put in place mechanisms for effective implementation to secure compliance. To enhance compliance, a coherent spectrum of practices should involve key actors and also carefully balance incentives and sanctions. This includes communication to raise awareness of expected standards, education to support understanding and provide guidance, formal reporting to facilitate monitoring, leadership to set examples, incentives to create a culture of compliance, visible and proportionate sanctions, among others. Securing the objectives of a lobbying law may also require that officials have the authority to provide interpretation, to review filings, to demand clarifications from registrants and to pursue investigations further, if necessary, to the point of notifying the need for criminal enquiries.
- Finally, in order to meet the growing expectations of society for good governance, there should be a formal review mechanism of the functioning of lobbying laws and policies on a regular basis in order to make necessary adjustments in light of experience with implementation.

Implementing a risk-based approach to internal control

Internal control is commonly recognised as the set of means put in place in order to mitigate risks and provide reasonable assurance that public organisations: *i)* deliver quality services in an efficient manner, in accordance with planned outcomes; *ii)* safeguard public resources against misconduct and (active and passive) waste; *iii)* maintain, and disclose through timely reporting, reliable financial and management information; and *iv)* comply with applicable legislation and standards of conduct (see INTOSAI, 2004). Reasonable assurance is achieved through management systems and practices that serve to mitigate risk and vulnerabilities (*i.e.* management control) and an independent and objective assessment of their functioning (*i.e.* internal audit). It is also

influenced by the standards of conduct adhered to by public officials, a topic discussed in Chapter 4 of this report. Effective internal control, no matter how well conceived and operated, can provide only reasonable –not absolute – assurance to decision makers and public managers about the integrity of their organisation's operations. The role of internal control in preventing corruption in public organisations is also recognised in international conventions against corruption.[2]

Implementing a risk-based approach to internal control purports to ensure that management control is proportionate with potential vulnerabilities of each respective public organisation. It is not simply about regulating internal practices and procedures. It requires having in place a systematic process and adequate capability (*i.e.* knowledge, resources, etc.) to assess and use assessment results to adjust management systems in order to prevent risks from (re-)occurring in a cost-effective manner. It also necessitates an *ex post* assessment of risk-mitigating actions, recognising that earlier diagnosis and mitigating actions may not always have the desired effect. Doing so requires leadership to create a culture that encourages the management of risk as a strategic and continuous action supporting prevention rather than a process of attributing fault to individuals and the inadequacies of systems. Although internal auditors can play a valuable advisory role in internal control, the internal auditor should not be a substitute for a risk-based approach to internal control. Finally, to be effective, management control and internal audit need to be integrated with other organisational systems that feed directly into management frameworks and decision-making processes as a means of strengthening public governance.

Brazil's internal control system of the federal public administration has been continuously modernised since the late 1980s. It began with standardisation and automation of the back-end systems and the establishment of the internal control policy and stewardship role within the Office of the Comptroller General of the Union. It is advancing with the introduction of risk-based control both at the level of the federal public administration and individual public organisations. These developments transform the emphasis from compliance to management. The modernisation of the internal control system supports the government's efforts to enhance integrity and prevent corruption. In order to strengthen the internal control framework, the federal government of Brazil could consider the following proposals for action for the Office of the Comptroller General of the Union:

- Complement the *Internal Control Manual* of the federal public administration with a series of good practice guides. The current manual is particularly formalistic and theoretical in nature rather than operational. These good practice guides may address issues such as risk management, specific control actions, internal audit planning, internal audit resourcing, internal audit performance assessment and quality assurance. Good practices need not only originate from federal public organisations but also state and municipal public organisations as well as private organisations, in Brazil or overseas. In the process of the formulating good practice guides, responsibility should be upon the Office of the Comptroller General to identify good practices from internal audit units within the indirect federal public administration to complement those of its own audit activities.
- Introduce, in a phased manner, the current risk management methodologies in at least 5 public organisations during 2011/2012 as a basis for continued learning on risk management and to refine earlier risk management methodologies. In this

process, the Office of the Comptroller General of the Union should actively take a lead role in the process because of its mandate, resourcing and understanding of internal control. This will help public organisations to better understand their operational risks and serve as input into refining the current operational generic risk management methodologies. Over time, and with increased maturity of the risk management framework in these federal public organisations, the role of the Office of the Comptroller General of the Union can focus on providing an independent assurance of the effectiveness of risk management strategies and the effectiveness of the framework.

- Work together with the Federal Ministry of Planning, Budget and Management and the national schools of administration to integrate risk management into programmes supporting the development of competencies of senior public managers.

In parallel with moves to strengthen the internal control system of the federal public administration, internal audit within federal ministries has been largely centralised within the Secretariat of Federal Internal Control with dedicated internal audit teams allocated to each federal ministry. Agencies, foundations, state-owned and mixed-capital enterprises all have their own internal audit units. The Secretariat of Federal Internal Control has increasingly invested in programme (performance) audit and developing systems to follow-up on audit recommendations. In order to strengthen the efficiency of the internal audit function, the federal government of Brazil could consider the following proposals for action for the Office of the Comptroller General of the Union:

- Include both internal and external audit recommendations and progress made in implementing them in the proposed Monitor-web, a system designed to ensure quality and adequate follow up of internal audit activities. Focusing on internal audit recommendations alone does not allow management to have a holistic picture of independent assessments of their operations. Moreover, as the federal public administration introduces risk management into federal public organisations, attention may also be given to integrating this information into the audit monitoring systems. This would ensure a single dashboard for public managers to monitor and evaluate internal control actions. It would also enable internal auditors to leverage off the same information held by public managers in conducting an objective evaluation of internal control actions.
- Benchmark internal audit activities conducted by dedicated internal audit teams within the Office of the Comptroller General of the Union and the internal audit units of organisations of the indirect public administration to explore differences in costs, quantity, time and quality of internal audit activities and to drive performance improvements.
- In the medium to long term, assess the business case for a shared internal audit service within the direct public administration. Such an assessment would include what criteria should be introduced should a federal public organisation wish to develop its own internal audit function.

In order to strengthen collective commitment and the whole-of-government approach for internal control, the federal government of Brazil could consider the following proposals for action for the Office of the Comptroller General of the Union:

- Explore mechanisms for closer co-ordination in the modernisation of the internal control framework between the Office of the Comptroller General of the Union

with the Secretariats of Management, Logistics and Information Technology (Federal Ministry of Planning, Budget and Management) and Secretariat of the National Treasury (Federal Ministry of Finance). These secretariats have policy functions that impact upon the internal control system of the federal public administration. For example, the Secretariats of Management are working together with federal public organisations to re-engineer internal processes to improve service delivery. The Secretariats for Logistics and Information Technology and National Treasury also oversee many of the back-office management systems of the federal public administration.

- Assess the role and composition of the Commission for Co-ordination of Internal Control as a mechanism for exchanging experiences on internal control. This commission has not convened since 2003. The commission could play an advisory role in the development of tools to support risk management in federal public organisations and provide much meaningful input into the generic risk management methodologies developed by the Office of the Comptroller General of the Union. The current composition, however, may benefit from the participation of more internal audit units from organisations of the indirect public administration (currently only one-third) and the involvement of representatives from the national professional internal audit association and the Federal Court of Accounts.

Embedding high standards of conduct

Standards of conduct are recognised as essential for guiding the behaviour of public officials in line with the public purpose of the organisation in which they work. The OECD "Principles for Improving Ethical Conduct in the Public Service" acknowledge the critical role of, and provide guidance to decision makers and public managers on, high standards of conduct for a cleaner public administration (see Annex 4.A1). Recognising the emerging risks at the interface of the public and private sectors, OECD member countries have since adopted "Guidelines for Managing Conflict of Interest in the Public Service" and "Principles for Transparency and Integrity in Lobbying". Standards of conduct are also considered a key component of sound internal control and the fight against corruption. The International Organisation of Supreme Audit Institutions (INTOSAI), for example, revised its "Guidelines for Internal Control Standards for the Public Sector" to include ethics management. The inclusion was justified because of the importance of standards of conduct for the prevention and detection of fraud and corruption. Standards of conduct are also articulated in international conventions against corruption.[3]

Embedding high standards of conduct is supported by: *i)* developing and regularly reviewing practices and procedures influencing standards of conduct; *ii)* promoting government action to maintain high standards of conduct and to address risks; *iii)* incorporating ethical dimensions into management frameworks to ensure that practices are consistent with the public administration's values; and *iv)* assessing the effects of public management reforms on ethical conduct. There is also a growing demand in OECD member countries for evidence of embedding high standards of conduct, requiring governments to give attention to assessment and verification. This is a difficult task, however, and many challenges exist including: *i)* defining what is measurable; *ii)* ensuring credible and reliable assessment results; and *iii)* integrating assessment results in policy making to make certain they have an effective impact.

Brazil has sought to clarify and maintain the relevance of, and address emerging risks through, standards of conduct for federal public officials. These efforts have resulted in the creation of standards for conflict of interest, gifts, participation in external events, nepotism, etc. A bill regulating conflict of interest (including post-public employment), is currently under discussion by the National Congress. In order to strengthen the legal framework and embed high standards of conduct, the federal government of Brazil could consider the following proposals for action:

- Broaden the scope of coverage of officials under the Code of Conduct for High Public Officials to include level 4 and 5 supervisory and management officials, and their equivalents. A unique and defining feature of supervisory and management officials is that they may be seconded from another public organisation (mainly from the federal administration but also from a state or a municipal administration) or recruited externally from the private and not-for-profit sectors. Bill no. 7 528/2006 regarding conflict of interest already proposes to expand the definition of high public official to include level 5 supervisory and management officials and their equivalents. Broadening the scope of coverage of officials under the Code of Conduct for High Public Officials to include level 4 and 5 supervisory and management officials and their equivalents would expand the coverage of the Code of Conduct for the High Officials in the federal public administration from approximately 450 to 4 450 officials.
- Utilise risk management activities to identify emerging ethical risks facing public officials in decision-making processes to clarify and maintain the relevance of standards of conduct. At present, the generic risk management methodology developed by the Office of the Comptroller General of the Union is framed as a means of strengthening internal controls and preventing corruption rather than ethical dilemmas and possible conflicts of interest. This could involve the participation of members of the ethics committees of individual public organisations in the process of risk identification, assessment and formulation of mitigating actions. This could be explored in the piloting of the risk management methodologies scheduled for 2011/2012.

Since 2006, the Office of the Comptroller General of the Union has been developing programmes to disseminate information on expected standards of conduct and to build capacity for applying them in day-to-day activities. Moreover, the Office of the Comptroller General of the Union has begun to identify good practices, analyse officials' private interest disclosures and audit the existing ethics actions in individual federal public organisations. In order to foster high standards of conduct among federal public officials, the federal government of Brazil could consider the following proposals for action by the Public Ethics Commission and Inspectorate General of Administrative Discipline:

- Develop guidelines on how to effectively conduct a consultation in the preparation of a code as a reference for individual public organisations as they develop their own codes. Consultations can support the development of a code of conduct, as well as ensure that any code is understood and considered relevant to public officials.
- Where appropriate, apply the code of conduct to service providers, including by inserting relevant provisions of the code into contracts and ensuring that complaints procedures (*e.g.* ombudsman) are well communicated to citizens by service providers.

- Identify and publish information on good practices for guiding public officials in applying high standards of conduct. To date, the Secretariat of Corruption Prevention and Strategic Information within the Office of the Comptroller General of the Union has conducted ad hoc surveys of good practices in relation to standards of conduct in individual public organisations. Such surveys could be used to complement the annual surveys of ethics management in order to disseminate good practices. Good practices need not only originate from federal public organisations but also state and municipal public organisations as well as private organisations, in Brazil and overseas. This may include protocols for public managers to raise issues of standards of conduct in day-to-day work, model training packs for trainers and students, etc.
- Design training activities or modules on standards of conduct to more closely correspond with the risks associated with officials' tasks and level of management (*i.e.* dilemma-type training). This would help to ascertain what public officials consider an appropriate response to situations susceptible to breaches in standards of conduct. At present, training activities for public officials on standards of conduct give little, if any, attention to dilemmas. Where dilemmas are used, they appear to be general to the organisation rather than specific to the function and rank of the public official participating in the training activities.

Brazil does not have a clear framework for assessing the impact of its ethics management or administrative discipline systems (many OECD member countries face the same challenge). Within Brazil's federal public administration qualitative and quantitative data does exist and efforts have been made to standardise them during the last few years. In order to enhance efforts to verify standards of conduct, the federal government of Brazil could consider the following proposals for action by the Public Ethics Commission, the Inspectorate General of Administrative Discipline and the Ombudsman General of the Union:

- Move to standardise the annual ethics management surveys conducted by the Public Ethics Commission to allow monitoring of developments regarding standards of conduct over time. At present, annual ethics management surveys conducted by the Public Ethics Commission have lacked continuity and, as such, do not show trends over time. It may not be necessary to conduct the same survey every year. Alternative surveys may be conducted on a rolling basis. In addition, attention could focus on leveraging new technologies in conducting the surveys through officials' email accounts, for example. This would reduce the cost of conducting the survey and increase the speed with which results can be processed.
- Develop a joint-evaluation framework combining information on efforts to guide and monitor high standards of conduct (defined as ethics management in Brazil) and enforce standards of conduct (defined as administrative discipline in Brazil). Information on ethics management is already collected through annual surveys of ethics management, training on standards of conduct, ethics counselling and ethics investigations by the Public Ethics Commission and ethics committees of individual public organisations. Information on administrative discipline is already collected by the Inspectorate General of Administrative Discipline. Such a framework could include both quantitative and qualitative data. Partnerships with educational institutions may aid the design of methodologies to evaluate standards of conduct.

- Support public managers to apply the joint-evaluation framework to assess standards of conduct within their own organisations as a basis for improvement, to facilitate benchmarking across federal public organisations in a meaningful way and to complement evaluation activities at a whole-of-government level.
- Communicate the results of annual assessments internally within federal public organisations, across the federal public administration, as well as to citizens. Communicating the results of assessment can positively shape opinion about the role and capability of efforts to embed high standards of conduct.

Enhancing integrity in public procurement

Public procurement is recognised as a strategic instrument for public service delivery – but also an activity vulnerable to misconduct and (active and passive) waste (see, *e.g.* OECD, 2005b; 2007; 2009d).[4] Its prominence as a policy instrument relates to its total value: general government procurement accounts for between 4-14% of gross domestic product (GDP) in OECD member countries. In Brazil, conservative estimates suggest that general government procurement accounts for approximately 8.7% of GDP. Of this 1.6% is attributed to the federal government, 1.5% to state governments, 2.1% to local governments and 3.2% is attributed to state-owned and mixed capital enterprises.[5] Given the substantial financial flows and direct linkage with service delivery, many governments in OECD member countries are taking steps to enhance integrity within their procurement systems. The role of integrity in public procurement as a measure to prevent corruption within the government is recognised in the OECD "Principles for Enhancing Integrity in Public Procurement" (OECD, 2008; 2009a) and international conventions against corruption.[6]

Enhancing integrity in public procurement is not simply about increasing transparency and limiting management discretion in decision-making processes. Measured discretion in procurement decision making is needed to achieve value for money, often defined as the most economically advantageous tender. Rather, enhancing integrity necessitates recognising the risks inherent throughout the entire procurement cycle, developing appropriate management responses to these risks and monitoring their impact of risk mitigating actions. Moreover, it requires transforming procurement into a strategic and capable profession rather than a simple administrative function. Professionalism necessitates developing knowledge and creating tools to support improved procurement management decision making and assessment. Enhancing integrity in public procurement must also be placed within the broader management systems and reform of the public administration.

Brazil has recognised the role of procurement as a strategic instrument of public service delivery and an activity vulnerable to misconduct and waste. The federal public administration has taken steps to support development and has taken steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making in order to support value for money, prevent waste in the allocation of resources and safeguard integrity. The federal procurement portal (Comprasnet), the electronic *Official Gazette of the Union*, the Transparency Portal of the Federal Public Administration, the Public Works Portal (Obrasnet) and approximately 400 transparency pages of individual public organisations provide access to information. In order to further enhance transparency in procurement, the federal government of Brazil could consider the following proposals for action by the Federal Ministry of Planning, Budget and Management:

- Transparency could also be introduced in the pre-tender phase of the procurement cycle, for example through the preparation and publication of procurement plans by individual federal public organisations. Such information would help public organisations to leverage its buying power while allowing control and monitoring.
- Publish information on contract amendments above a certain amendment threshold on the federal procurement portal in order to further enhance transparency and direct social control. Such information can deter suppliers from submitting unrealistic prices and encourage more accountable contract management within public organisations.
- Integrate procurement information into one portal as a one-stop shop for suppliers and citizens. As part of this process, attention could focus on understanding the use of the various procurement portals as a basis for evaluating the appropriateness of information and means in which it is made available.

Electronic reverse auctions have been promoted as a means to improve transparency, control and efficiency in procurement. Approximately 85% of off-the-shelf goods and common services are procured using electronic reverse auctions, yielding annual cost savings of approximately 23% for the federal government since FY 2002. Although contributing to a reduction in the number of exemptions to competitive procurement, exemptions and waivers remain high: 23% of contracts and 86% of contract values in FY 2009. In order to better understand the factors contributing to the use of exemptions, the federal government of Brazil could consider the following proposal for action by the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Conduct a review of below competition threshold and emergency procurement as a basis for reviewing procurement guidelines and improving procurement practices. Such a review could also help shed light on whether this stems from a lack of incentives for procurement planning and how planning could generate an additional efficiency dividend.

Automated back-office management systems support internal control activities, including separating procurement duties, embedding multi-level reviews and ensuring documentation of decision-making processes. New audit techniques and risk management are being introduced to create reasonable assurance of integrity in the procurement process. In order to strengthen internal control in procurement, the federal government of Brazil could consider the following proposals for joint action for the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Devolve access to “red flags” identified by crossing procurement data with other government databases in order to place responsibility upon public procurement officials to conduct due diligence before contract award. Care, however, is necessary to ensure that red flags are properly vetted and employed. The flags identify atypical situations but are not a priori evidence of irregularities.
- Take forward plans to introduce risk management in federal public organisations, prioritising public organisations with a large share of public administration’s procurement spending and contracts. Introducing risk management in public procurement could serve as a critical entry point for introducing risk management more generally in some federal public organisations.
- Amend the law to reduce discretion with regard to the imposition of administrative procurement sanctions. Procurement legislation does not determine

how the different administrative sanctions are to be applied in practice (*e.g.* when will a certain breach of the contract obligations trigger a warning as opposed to a fine) or standardised amounts for administrative fines.

While much has been achieved in terms of promoting transparency throughout the procurement cycle and introducing risk-based internal control, attention needs to focus on developing capability among procurement officials to support public organisations' service delivery and the government's strategic objectives. It will require transforming procurement into a strategic profession rather than a simple administrative function. In order to develop good procurement management practices in public organisations, the federal government of Brazil could consider the following proposals for joint action for the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Develop good practice manuals to enhance professionalism among public procurement officials. Good practices need not only originate from federal public organisations but also state and municipal public organisations as well as private organisations, in Brazil or overseas. Examples of issues that good practices guides may address include procurement planning, supplier engagement, etc.
- Develop procurement performance indicators at the level of individual public organisations to aide public procurement officials and public managers improve procurement performance over time. Indicators should be supported by a clear rationale, definition, methodology and data source. Examples of key performance indicators may include number of appeals, time between bid opening and award, number of contract amendments, price increase, etc.
- Conduct, together with federal public organisations, procurement capability assessments. These assessments can draw upon the results of key performance indicators and help identify good practices as input into operational procurement guidelines. Attention should particularly focus on identifying concrete actions for improvement and periodically monitoring performance against these actions.
- Expand recording of information on procurement appeals and complaints as a first step to conducting a systemic audit of the review and remedies system. Such an audit is necessary to understand how the review and remedies system is used by suppliers and its impact on procurement processes. It is critical that the government better understand the issues facing the procurement review and remedies system to inform possible reforms in this area.

Management and consultation

In September 2009, the federal government of Brazil commissioned a major review of the integrity management systems of the public administration to be undertaken by the OECD. The objectives of this review were to:

- examine the functioning of structures, practices and procedures that have been established to enhance integrity and prevent corruption; and
- identify areas where future attention could centre drawing upon recent experiences and good practice from OECD member countries.

As part of this review, the OECD analysed the operations of Brazil's integrity instruments, systems structured around four core pillars:

- **Promoting transparency and citizen engagement** as key instruments to support open and inclusive policy making and support policy performance. Openness and transparency can help redefine the boundaries between the public and the private spheres and to strengthen integrity. Transparency policies facilitate not only citizens' oversight but also levelling the playing field in the private sector and the formulation of citizen-centred services necessary to support socio-economic development. The OECD has developed Guiding Principles for Open and Inclusive Policy Making. Moreover, in 2010 the OECD, together with the Business and Industry Advisory Committee (BIAC), Trade Union Advisory Committee (TUAC), Civicus and Transparency International issued the "Venice Initiative for Dialogue with Civil Society Organisations".
- **Implementing a risk-based approach to internal control** provides assurance that public organisations deliver quality services in an effective and efficient manner, in accordance with planned outcomes; safeguard public resources against mismanagement and waste; maintain and disclose reliable financial and non-financial management information; and adhere to legislation, management directives and standards of conduct.
- **Embedding high standards of conduct** as critical for guiding the behaviour of public officials in line with the public purposes of the organisation in which they work and the federal public administration more generally. It is a precondition for ensuring reliable public services, impartial treatment of citizens and the efficient use of public resources. OECD member countries recognised that the need to embed high standards of conduct requires well-functioning institutions and systems with the adoption of the "Principles for Improving Ethical Conduct within the Public Service" in 1998, the "Guidelines for Managing Conflict of Interest in the Public Service" in 2003 and the "Principles for Transparency and Integrity in Lobbying" in 2010.
- **Enhancing integrity in public procurement** is a strategic instrument for governments to promote economic growth but also an activity vulnerable to misconduct and (active and passive) waste. Its prominence as a policy instrument relates to its total value: accounting for between 4-14% of GDP in OECD member countries. In 2008, OECD member countries recognised that the need to improve value for money in procurement needed to be accompanied by good governance measures with the adoption of the "Principles for "Enhancing Integrity in Public Procurement". This was complemented by the "Recommendation on Improving the Environmental Performance of Public Procurement" in 2003, "Principles for Private Sector Participation in Infrastructure" in 2007 and Guidelines for Fighting Bid Rigging in Public Procurement" in 2008.

To assess the state of implementation and the functioning of integrity management in Brazil's federal public administration, the report draws upon the experiences of three different policy areas:

- **The Secretariat of Federal Revenue** is Brazil's principal revenue authority. The secretariat has the authority to levy and administer taxes and customs duties, as well as to administer social security contributions, collectively accounting for 25% of GDP or two-thirds of total government revenue.
- **The Family Grant Programme** is a horizontal social policy (*i.e.* targeting multiple social objectives rather than a specific target) involving conditional cash

transfers to 12.6 million households (a quarter of the country's population). It is a core component the government's Zero Hunger (*Fome Zero*) Initiative to eliminate hunger by 2015.

- **The National STD/AIDS Programme** is a vertical social policy (*i.e.* targeting a specific issue independently rather than the "horizontal" strengthening of the sector) providing free condoms and anti-retroviral treatment to all identified patients. It is recognised worldwide as a leading example of an effective policy response to fight the HIV/AIDS pandemic.

The review was conducted by the OECD Directorate for Public Governance and Territorial Development. The review was conducted in the following main stages.

- During the first stage, desk research was conducted to explore the legislative and organisational framework of integrity management within Brazil's federal public administration. This was complemented by a literature review of Brazil's integrity instruments and systems structured around the review's four core pillars. During this stage the OECD liaised with other international organisations that have previously worked on issues of integrity management within Brazil's federal public administration (*e.g.* Inter-American Centre for Tax Administration, Inter-American Development Bank, World Bank, etc.).
- During the second stage, information was collected directly from the federal government of Brazil using questionnaires tailored for the OECD Public Governance Review. Four questionnaires sent to the federal government of Brazil between November 2009 and February 2010. These were completed by the Office of the Comptroller General of the Union, the Secretariat of Federal Revenue, the Federal Ministry of Social Development and the Fight Against Hunger and the Federal Ministry of Health. Clarifications were requested by the OECD Secretariat, where necessary, by email, in March and April 2010.
- During the third stage, field work was conducted in Brazil on 3-14 May 2010. Officials of the OECD Secretariat met with over 100 officials in both Brasília and São Paulo, in addition to representatives of civil society, the private sector, the media and other international organisations operating in Brazil. This field mission served to consolidate data necessary to complete a series of working papers which constituted the basis for formulating the chapters of this report and for shaping the proposals for action.
- During the fourth stage, a second field mission was arranged on 9-13 August 2010, in which a series of round table discussions were held to launch the dialogue with policy makers. The discussions were attended by nearly two dozen policy makers, including ministers, deputy ministers and secretaries, from the centre of government (*e.g.* the Office of the Comptroller General of the Union; Office of the President of the Republic; Federal Ministry of Planning, Budget and Management; Federal Ministry of Finance), federal line ministries (*e.g.* Federal Ministry of Health, Federal Ministry of Social Development) and Brazil's Supreme Audit Institution (the Federal Court of Accounts).
- During the fifth stage, draft chapters of the report were discussed at a technical level by the OECD Integrity Expert Group on 21-22 October 2010 in Paris. The OECD Integrity Expert Group is composed of technical-level representatives from central government authorities in charge of integrity and corruption policies in the public sector. During this session Brazil was represented by Luiz Augusto

Fraga Navarro de Britto Filho (Executive Secretary of the Office of the Comptroller General of the Union), Izabela Moreira Corrêa (Manager, Promoting Ethics, Transparency and Integrity of the Office of the Comptroller General of the Union), Ernane Pinheiro (Member of the Public Ethics Commission).

- During the final stage, the draft report was peer reviewed at the OECD Public Governance Committee meeting on 16 November 2010 in Venice, Italy. The OECD Public Governance Committee is composed of policy-level representatives from central government from the 33 OECD member countries. During this session Brazil was represented by Jorge Hage Sobrinho (Comptroller General of the Union) and Izabela Moreira Corrêa (Manager, Promoting Ethics, Transparency and Integrity of the Office of the Comptroller General of the Union).

Officials from OECD member countries actively participated in the peer review process, including the policy dialogue in Brazil, the Integrity Expert Group meeting and the peer review dialogue at the Public Governance Committee meeting. The OECD is grateful to their governments for allowing these officials to participate in the review. Their participation has substantially contributed to the quality of the review.

Most of the work in preparation of the review was carried out by the Office of the Comptroller General of the Union who has shown tremendous commitment to co-ordinate the process with a wide range of stakeholders. This commitment was also critical for ensuring sufficient data and insight, as well as review and feedback, on the working papers prepared as input into the peer review process and the final report.

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Table 1. **OECD interviews: legislature**

Members of the National Congress
Representatives of the Parliamentary Front for Combating Corruption
Federal Court of Accounts

Table 2. **OECD interviews: judiciary**

National Council of Justice
High Court of Justice

Table 3. **OECD interviews: federal public administration**

Office of the Comptroller General of the Union
Executive Secretariat
Secretariats of Federal Internal Control
Secretariat of Corruption Prevention and Strategic Information
Inspectorate General of Administrative Discipline
Office of the Ombudsman General of the Union
Office of the President of the Republic
Department for Social Interaction
Department for Analysis and Follow-Up of Government Policies
Internal Control Secretariat of the Office of the President of the Republic
Public Ethics Commission
Attorney General of the Union
Federal Ministry of Culture
Federal Ministry of Defence
Federal Ministry of Finance
Secretariat of Federal Revenue
Secretariat of the National Treasury
Financial Intelligence Unit
Federal Ministry of Foreign Affairs
Federal Ministry of Health
Department of Surveillance, Prevention and Control of Sexually Transmitted Diseases and Acquired Immunodeficiency Syndrome
National Department of Internal Audit of the Unified Health System (DENASUS)
Federal Ministry of Justice
Department for Social Interaction

Table 3. **OECD interviews: federal public administration** (***cont'd***)

Department for Analysis and Follow-Up of Government Policies
Federal Ministry of Labour and Employment
Federal Ministry of Planning, Budget and Management
Secretariat for Logistics and Information Technology
Secretariat for Public Management
Secretariat for Planning and Investment
Federal Ministry of Social Development and the Fight Against Hunger
Secretariat of Citizen Income
Secretariat of Information Management and Evaluation
Asset Management Company (indirect public administration)
Federal Savings Bank (indirect public administration)
National Department for Works Against Droughts (indirect public administration)
National Industrial Training Service (indirect public administration)
National Institute of Social Security (indirect public administration)
National Post Service (indirect public administration)

Table 4. **OECD interviews: non-governmental actors**

AMARRIBO (Brazilian non-governmental organisation)
Article 19 (International non-governmental organisation)
Contas Aberta (Brazilian non-governmental organisation)
Ethos Institute (Brazilian non-governmental organisation)
Inter-American Development Bank
Inter-American Centre of Tax Administration
Institute of Independent Auditors of Brazil
National Confederation of Industries
United Nations Office of Drugs and Crime
World Bank

Notes

1. See 2004 United Nations Convention Against Corruption, Article 10:

   "Taking into account the need to combat corruption, each state party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organisation, functioning and decision-making processes, where appropriate. Such measures may include, *inter alia*: *i)* adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organisation, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; *ii)* simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and *iii)* publishing information, which may include periodic reports on the risks of corruption in its public administration."

   See also 1996 Organisation of American States' Inter-American Convention Against Corruption, Article III:

   "For the purposes set forth in Article II of this Convention [*i)* to promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and *ii)* to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance] the states parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen…Mechanisms to encourage participation by civil society and non-governmental organisations in efforts to prevent corruption."

2. See United Nations Convention Against Corruption, Article 9.2:

   "Each state party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall [include]… *iii)* a system of accounting and auditing standards and related oversight; *iv)* effective and efficient systems of risk management and internal control; and *v)* where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph."

   See Inter-American Convention Against Corruption, Article 3:

   "[To promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance] the states parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: …government revenue collection and control systems that deter corruption".

3. The United Nations Convention Against Corruption draws reference to: *i)* the promotion of integrity, honesty and responsibility among its public officials; *ii)* the application of codes of conduct to articulate the standard of conduct of public officials for the correct, honourable and proper performance of public functions; *iii)* the establishment of measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities; *iv)* measures and systems requiring public officials to make declarations of their private interests that can give rise to a conflict of interest with respect to their functions as public officials; and *v)* disciplinary or other measures against public officials who violate the codes or standards (Article 8). This is in addition to maintaining and strengthening systems for the recruitment, hiring, retention, promotion and retirement of public officials (Article 7).

   The Inter-American Convention Against Corruption notes, Article 3:

   "[To promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance] the states parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: …*i)* standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes; *ii)* mechanisms to enforce these standards of conduct; *iii)* instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; *iv)* systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public…*viii)* systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their constitutions and the basic principles of their domestic legal systems; *ix)* oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts".

4. Active waste entails direct or indirect benefit for the public decision maker, i.e. reducing waste would reduce the utility of the decision maker. Passive waste, in contrast, does not benefit the decision maker. Passive waste can derive from a variety of sources: the public official does not possess the skills to minimise costs; the public official has no incentive to minimise costs; excessive regulatory burden may make public procurement cumbersome and increase the average price that a public organisation pays.

5. Public procurement is measured as intermediate consumption plus gross fixed capital formation. Gross fixed capital formation is the sum of investments made by government (acquisition of assets) less any fixed assets sold and, thus, may slightly understate the size of investment-related procurements. It includes defence procurement. Figures differ from Eurostat estimates that include social transfers in

kind. Social transfers in kind have been excluded because they represent only funded government expenditure and not public procurement.

6. See United Nations Convention Against Corruption, Article 9.1:

"Each state party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective, *inter alia*, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, *inter alia: i)* the public distribution of information relating to procurement procedures and contracts (e.g. information on invitations to tender and relevant or pertinent information on the award of contracts, allowing suppliers sufficient time to prepare and submit their tenders); *ii)* the establishment, in advance, of conditions for participation (e.g. selection and award criteria and tendering rules) and their publication; *iii)* the use of objective and pre-determined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures; *iv)* an effective system of appeal to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed; and *v)* measures to regulate matters regarding officials responsible for procurement (e.g. private interest declaration in particular public procurements, screening procedures and training requirements).

See Inter-American Convention Against Corruption, Article 3:

"For the purposes set forth in Article II of this Convention [i.e. *i)* to promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and *ii)* to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance], the states parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen…*v)* systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems."

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Chapter 1

Overview

Brazil is a major emerging economy and is playing an active role in international fora, including in the area of integrity and preventing of corruption. This chapter introduces the federal public administration and the core integrity actors within the federal executive and the federal government. The key organisations for fostering integrity in Brazil's federal public administration are: the Office of the Comptroller General of the Union, the Public Ethics Commission, the Department of the Federal Police, the Office of the Attorney General of the Union, and the Office of the Federal Public Prosecutors. The National Strategy Against Corruption and Money Laundering, adopted in 2003, brings together these and around 60 other public organisations. Within the federal government the National Congress – supported by the Federal Court of Accounts – and the federal judiciary provide a check and balance over the federal government and a complementary role in defining and enforcing integrity. The chapter also briefly introduces the main characteristics of the media, private sector and civil society that play a critical role in achieving a cleaner public administration.

Introduction

Brazil is one of the leading emerging economies in the world, South America's most influential economy and biggest democracy. The Brazilian economy has strong gross domestic product (GDP) figures and decreasing unemployment, along with low lending rates and a pro-active government. Over the last 5 years, Brazil's GDP grew 4.7% on average; 6.7% of GDP belongs to agriculture, 28.0% to industry including construction and 65.3% to services. Underpinning Brazil's economic resilience during the last decade has been significant improvements in its fiscal performance, expansionary fiscal policy, strong monetary easing, the expansion of credit supply from public banks and financial stability. However, the 2009 OECD Economic Survey of Brazil (OECD, 2009a) concluded that, despite considerable progress in many areas, substantial opportunities remain for making government operations more cost-effective. Brazil spends a high share of GDP on selected government-financed programmes compared to OECD member countries and its emerging-market peers, but outcome indicators are often comparatively poor. Incentives to enhance the efficiency of government operations are necessary and call for concerted action across many policy areas – among them integrity and the prevention of corruption.

The federal government of Brazil has undertaken continuous reform over the past decade to enhance integrity and prevent corruption within its public administration. These reforms focus on: *i)* increasing transparency and direct citizen oversight over public service delivery; *ii)* introducing risk-based internal control within public organisations; and *iii)* promoting high standards of conduct among federal public officials. Earlier efforts to improve control over public expenditure and to modernise the public administration, in the 1980s and 1990s, respectively – as well as in response to a number of corruption cases that captured public concern – spurred these actions. The federal government is also working to develop a co-ordinated approach for creating a culture of integrity and preventing corruption. Establishing the Office of the Comptroller General of the Union (*Controladoria-Geral da União*) and the Public Ethics Commission (*Comissão de Ética Pública*) have been core elements of these efforts. These central authorities have taken actions to consolidate the national systems for administrative discipline, ethics management and the ombudsman (citizens' relations) function in 2007, 2008 and 2009, respectively.

This chapter provides an overview of:

- the federal government of Brazil, including the machinery of government;
- the core integrity actors within the federal public administration;
- the contribution of the National Congress and federal judiciary in supporting integrity and the prevention of corruption within the public administration; and
- the contribution of non-governmental actors in demanding and overseeing a cleaner public administration.

The federal government

Like many Latin American countries, Brazil has a presidential political system. The President of the Republic performs the functions of head of state and head of the federal government. The President and vice-president are popularly elected on the same ticket for

no more than two consecutive four-year terms. The National Congress (*Congresso Nacional*) consists of the Federal Senate (*Senado Federal*) and the Chamber of Deputies (*Camara dos Deputados*). The Federal Senate is composed of 81 representatives from the 26 states and the Federal District, elected in single-seat constituencies. Federal senators are popularly elected for an eight-year term, with elections staggered so that two-thirds and one-third are elected alternatively every four years. The Chamber of Deputies is composed of 513 deputies popularly elected to 4-year terms by proportional representation.

Table 1.1. **System of executive power**

Presidential[1]	Dual executive[2]	Parliamentary[3]
Argentina, **Brazil,** Chile, Korea, Mexico, United States	France, Portugal	Australia, Canada, Germany, Italy, Japan, South Africa, Spain, United Kingdom

Notes:

1. Under a presidential system, the executive and members of the legislature seek election independently of one another. Ministers are usually not elected members of the legislature, but are nominated by the President and may be approved by the legislature.

2. The dual executive system combines a powerful President with an executive responsible to the legislature, both responsible for the day-to-day activities of the state. It differs from the presidential system in that the Cabinet (although named by the President) is responsible to the legislature, which may force the Cabinet to resign through a motion of no confidence.

3. Under a parliamentary form of executive power, the executive is usually the head of the dominant party in the legislature and appoints members of that party or coalition parties to serve as ministers in the Cabinet. The executive is accountable to parliament, which can end the executive's term through a vote of no confidence.

Source: Adapted from OECD (2009), *Government at a Glance 2009*, OECD Publishing, Paris, doi: 10.1787/9789264075061-en.

There are 3 tiers of Government in the Brazilian federation: the federal government, 26 states and the Federal District (in which the capital Brasília is located), and 5 564 municipalities.[1] Table 1.3 maps the responsibility for policy and service provision across levels of government. There is, however, no explicit assignment of functions by level of government in the 1988 Federal Constitution. Previous studies by the OECD have noted that there is an unequal devolution of public service responsibilities across Brazil's three tiers of government. This disequilibrium is largely attributed to social and economic disparities between states and municipalities which precluded a uniform transfer of responsibility for expenditure to all federal units. Moreover, devolution of these responsibilities has not always been matched by a corresponding transfer of personnel and equipment (OECD, 2001). While municipal and state governments are responsible for a large share of service delivery, interaction between citizens and the federal public administration has expanded through a number of federal programmes. For example, the Lula administration (2003-10) has strengthened and consolidated a number of federal programmes, among them Family Grant Programme and the National STD/AIDS Programme (see Case Studies 2 and 3, respectively).

Table 1.2. **Structure of government**

Federal	Unitary
Argentina, Australia, **Brazil**, Canada, Germany, Mexico, South Africa, United States	Chile, France, Italy, Japan, Korea, Portugal, Spain, United Kingdom

Source: Adapted from OECD (2009), *Government at a Glance 2009*, OECD Publishing, Paris, doi: 10.1787/9789264075061-en.

Table 1.3. **Responsibility for policy and service provision across levels of government**

Function	Responsibility for policy and control	Responsibility for service provision
Defence	F	F
Foreign affairs	F	F
Foreign trade	F	F
Monetary and financial policies	F	F
Immigration	F	F
National roads	F	F, S
Interstate roads	F	F, S, L
Social security	F	F, S
Railways and airports	F	F, S
Natural resources	F	F, S
Sector policies	F, S	F, S
Environmental protection	F, S	F, S
Health	F, S	F, S, L
Social assistance	F, S	F, S, L
Police	F, S	F, S, L
Education	F, S, L	F, S, L
Fire protection	F, S	S
Water and sewerage	F	S, L
State road	S	S
Local roads	S	L
Parks and recreation	L	L

Notes: F = federal, S = state, L = local (*i.e.* municipal).

Source: OECD (2001), *OECD Economic Surveys: Brazil 2001*, OECD Publishing, Paris, doi: 10.1787/eco_surveys-bra-2001-en.

Machinery of government at the federal level

Brazil's federal public administration plays an essential role in policy making and implementation. It provides evidence and impartial analysis to the government so that it can make informed decision making. It also ensures the effective and timely implementation and delivery of policies to citizens. Federal Decree-Law no. 200/1967 divides the federal public administration into the direct and indirect administrations. The direct federal public administration includes the administrative structure of the Office of the President of the Republic, federal ministries and secretariats of ministerial status. The Office of the President of the Republic ensures the co-ordination and integration of governmental actions. Federal ministries and secretariats with ministerial status develop standards for the delivery of public services and establish directions, priorities and strategies for the use of public resources.

The indirect federal public administration includes organisations with legal personality, including agencies (*autarchies*), foundations, state-owned and mixed-capital enterprises. These public organisations implement policies on the instruction of organisations of the direct federal public administration. Each organisation of the indirect federal public administration is established by its own law that defines the degree of autonomy in connection with human resources, budget and procurement policies. The indirect public administration in Brazil developed rapidly in the mid- to late 1990s with the creation of a number of new public organisations with a separate legal personality.[2] Reforms in the late 1990s also opened the potential for establishing more contractual relationships between the organisations of the direct and indirect public administrations,

through the possibility of creating executive agencies (*agências executivas*).[3] This arrangement also provides an additional control mechanism: a management contract (*contrato de gestão*) with one or more supervising federal ministries defining objectives and benchmarks to monitor performance.[4] Despite its potential attractiveness, the use of executive agencies has been very limited.

Since the 1940s the federal public administration has created participatory councils (*conselhos*) and conferences as organised and institutionalised spaces for co-management of public policies. A wide range of councils provide assistance or advice to the President of the Republic and federal ministers. In 2010, there were 61 national councils to foster the participation of non-governmental organisations in the formulation of public policies. This number has increased from 42 national councils in 2003. These councils involve approximately 1 800 participants: 800 from the federal government and 1 000 from non-governmental organisations. The composition of the national councils varies considerably and is influenced by the policy sector and formalised in federal law or federal decree that establishes the council. At the municipal level, participatory councils are involved in the oversight of the implementation of federal programmes. In 2004, over 28 000 councils had been established for health, education and environment alone (Coelho et al., 2005). The roles of these councils are discussed in more detail in Chapter 2.

Table 1.4. **Federal ministries and secretariats of ministerial status**

24 federal ministries	
Agrarian Development	Health
Agriculture Livestock and Supplies	Justice
Cities	Mines and Energy
Communications	National Integration
Culture	Planning, Budgeting and Management
Defence	Science and Technology
Development, Trade and Foreign Trade	Social Development and Fight Against Hunger
Education	Social Security
Environment	Sports
Finance	Tourism
Fisheries and Aquaculture	Transport
Foreign Affairs	Work and Employment
13 secretariats of ministerial status	
Civil House of the Office of the President of the Republic	Secretariat of Communications
Office of the Attorney General of the Union	Secretariat of Human Rights
Office of the Comptroller General of the Union	Secretariat of Institutional Relations and Federal Affairs
General Secretariat of the Presidency	Secretariat of Ports
Institutional Security Office	Secretariat of Racial Integration
National Economic Development Council	Secretariat of Strategic Affairs
	Secretariat of Women Affairs

Public officials

In August 2010, there were approximately 570 000 public officials in Brazil's federal public administration – or approximately 50% of total federal employment within the federal government (see Table 1.5). The number of public officials within the federal public administration has fluctuated over the past 10 years (see Figure 1.1).[5] Between 2005 and 2008, the increase in federal public administration employment was approximately 10% (OECD, 2010). Federal government employment accounts for only a small share of total public employment in Brazil. In 2008 federal government

employment accounted for approximately 10-11% of total (*i.e.* federal, state and municipal) government employment,[6] compared to an average of approximately 20% in OECD member countries (see Figure 1.2).[7] When taking state-owned and mixed-capital enterprises into account, the percentage increases slightly, to about 11%-12%,[8] compared to an OECD average of approximately 22%. These percentages are also small in comparison to other South American countries such as Argentina and Chile (OECD, 2010).[9]

Table 1.5. **Employment in the federal government of Brazil**

Branch of federal government	Staffing[1]
Executive branch	964 432
Federal public administration	572 744
Direct public administration	228 781
Agencies (*autarchies*)	232 490
Foundations	111 473
Central Bank	4 440
State-owned enterprises	24 905[2]
Mixed-capital enterprises	12 868[2]
Public Prosecution of the Union	8 384
Military	341 091
Legislative	25 797
Judiciary	113 114
Federal District	102 111
Total federal government	1 103 343

Notes:

1. Numbers include only active public officials as of August 2010.

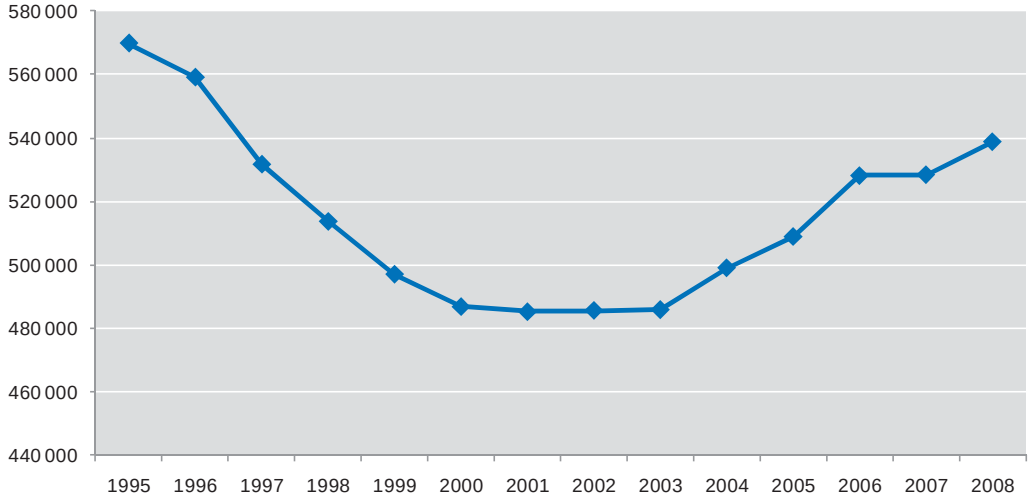
2. The number of officials in state-owned enterprises and mixed-capital enterprises refer only to those paid by the Treasury. The total number of employees in state-owned and mixed-capital enterprises is 460 866.

Source: Federal Ministry of Planning, Budget and Management.

The federal public administration is comprised of public servants and positions and functions of trust and gratifications (*cargos e funções de confiança e gratificações*). Public servants include the following categories: *i)* careers (*carreira*), of which there are 129 groups of jobs that typically constitute a narrowly defined occupational or professional job category – many appear specific to one public organisation; *ii)* groups of jobs (*plano de cargos*), inter-ministerial job classification schemes covering around one-quarter of federal government employees;[10] and *iii)* special groups of jobs (*plano especial de cargos*), of which there are 122 groups of jobs, attached to specific individual public organisations. The 2010 OECD Review of Human Resource Management of Brazil notes that this system no longer meets the operational needs of the public administration. Competing claims from the different categories have created pressures for further *ad hoc* changes rather than systematic reform of the public service (OECD, 2010).

Figure 1.1. **Number of federal public officials in the executive branch of government**

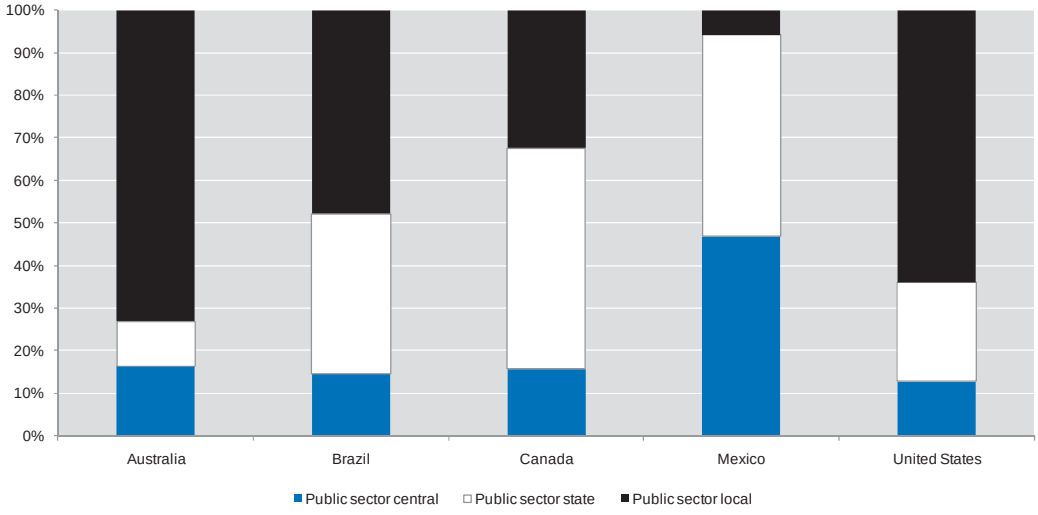
1995-2008



Source: Moraes et al. (2008), "O mito do inchaço da força de trabalho do executive federal" (The Myth of the Expansion of the Federal Executive Workforce), *Revista Res Publica*, 7(2), July-December.

Figure 1.2. **Share of public sector employees at different levels of Government in Brazil and select federal countries**

2003



Source: OECD (2010), *OECD Reviews of Human Resource Management in Government: Brazil, Federal Government*, OECD Publishing, Paris, doi: 10.1787/9789264082229-en.

Positions and functions of confidence and gratifications are officials that are appointed and removed on the prerogative of the President of the Republic as well as the heads of federal public organisations. This does not, however, automatically mean that they are political appointments. Public officials are routinely appointed to such positions. There are more than 30 categories with over 57 000 persons in total listed under the heading of categories and functions of confidence and gratifications. Supervisory and management positions (*direção e assessoramento superiores)* are the largest category; these appointees may either be seconded from another public organisation (mainly from the federal administration but also from a state or a municipal administration) or recruited externally, providing mobility within the federal public service and lateral entry from outside the public service. Secondment is only possible for supervisory and management positions.[11]

In March 2009, there were approximately 20 700 persons in supervisory and management positions. There are 6 levels of supervisory and management positions: supervisory and management positions level 1 (lowest) through level 6 (highest). Level 4 through 6 supervisory and management positions can be considered as the equivalent of senior management in OECD member countries. In August 2010, approximately 4 600 persons were in these 3 top levels: 212 persons at level 6; 1 034 at level 5 and 3 324 at level 4 (Federal Ministry of Planning, Budget and Management, 2010). The 2010 OECD Review of Human Resource Management in Government of Brazil expressed concern over the transparency and blurred political-administrative interface associated with the supervisory and management positions. While political involvement in administration is essential for the proper functioning of democracy – without it, an incoming political administration would find itself unable to change policy direction – there is a need to balance it with transparency and high standards of conduct.

Central integrity actors within the federal public administration

This section introduces the central integrity authorities within the federal public administration. These include:

- the Office of the Comptroller General;
- the Public Ethics Commission;
- the Department of the Federal Police (*Departamento Polícia Federal*);
- the Office of the Attorney General of the Union (*Advocacia-Geral da União*); and
- the Federal Public Prosecutors (*Ministério Publica Federal*).

Office of the Comptroller General of the Union

The Office of the Comptroller General of the Union is responsible for fighting acts of corruption and enhancing transparency within the federal public administration.[12] It is located within the Office of the President of the Republic. When first established in 2001, the Office of the Comptroller General of the Union comprised the Inspectorate General of Administrative Discipline and the Secretariat of Federal Internal Control. The Inspectorate General of Administrative Discipline was a new function within the federal government. It was intended to provide effective and efficient sanction of administrative misconduct by public officials while criminal investigations and prosecution were being

processed in the federal judiciary. The Secretariat of Federal Internal Control was a more established function within the public administration, but had previously been located within the Federal Ministry of Finance.

The functions of the Office of the Comptroller General of the Union have gradually expanded to include citizens' relations and corruption prevention (see Table 1.6). In 2002, the Office of the Ombudsman General was merged into the Office of the Comptroller General of the Union from the Federal Ministry of Justice. In 2003, the status of the Comptroller General was raised to that of Comptroller General of the Union. In 2006, the Secretariat for Corruption Prevention and Strategic Information (*Secretaria de Prevenção da Corrupção e Informações Estratégicas*) was established in the Office of the Comptroller General of the Union. Prior to this, corruption prevention activities were performed by different Office of the Comptroller General of the Union units. These developments in the Office of the Comptroller General of the Union have been closely associated with the Lula administration. This administration first came to office in 2003 on the back of a campaign targeting corruption (*Programa de Governo do Partido dos Trabalhadores*, 2002). Anti-corruption initiatives were again emphasised in the 2006 presidential elections (*Programa de Governo Lula Presidente*, 2007-10). This has resulted in greater media exposure, access to a larger pool of resources and greater autonomy to fight corruption for the Office of the Comptroller General of the Union.

Table 1.6. **History of the Office of the Comptroller General of the Union**

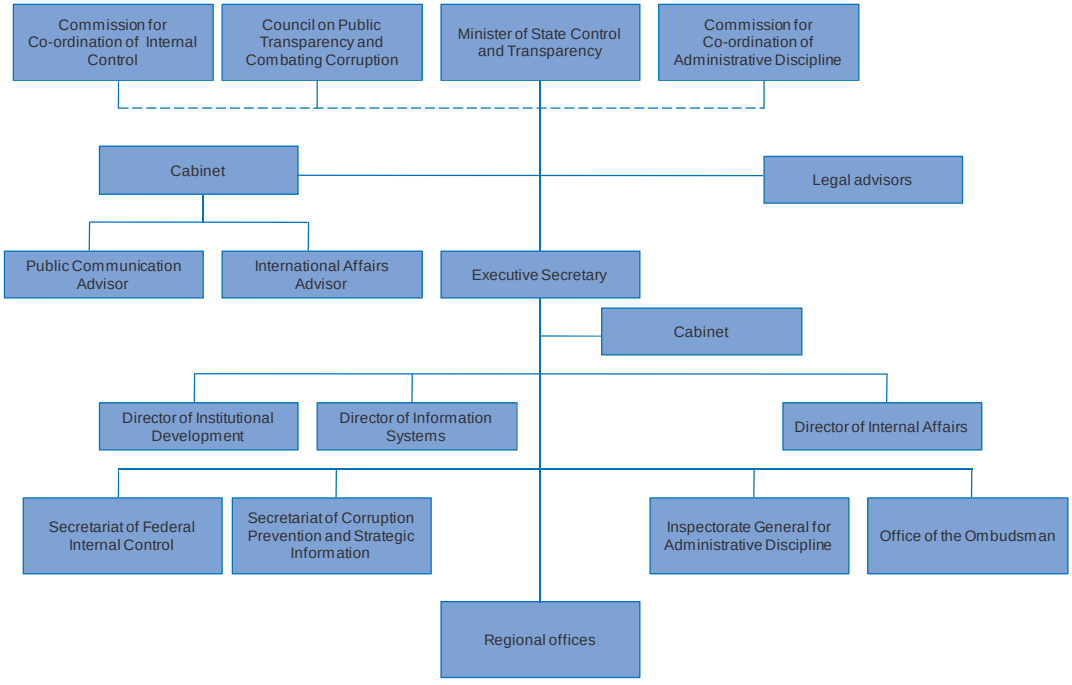
Year	Development
2001	Inspectorate General of Administrative Discipline established within the Office of the President of the Republic. Secretariat of Federal Internal Control (*Secretaria Federal de Controle Interno*) and Internal Control Co-ordination Committee (*Comissão de Coordenação de Controle Interno)*, both previously located in the Federal Ministry of Finance, merged with the Inspectorate General of Administrative Discipline.
2002	Office of the Ombudsman General (*Ouvidoria-Geral da União*), previously located in the Federal Ministry of Justice, merged into the Office of the Comptroller General of the Union.
2003	Status of Comptroller General of the Union raised to that of Comptroller General of the Union.
2006	Secretariat of Corruption Prevention and Strategic Information (*Secretaria de Prevenção da Corrupção e Informações Estratégicas*) created within the Office of the Comptroller General of the Union in charge of developing mechanisms to prevent corruption. Establishment of the Inspectorate General of Administrative Discipline as the central authority of the Administrative Disciplinary System of the Federal Public Administration.

Attached to the Office of the Comptroller General of the Union are a number of bodies to support policy formulation and co-ordinate policy implementation (see Figure 1.3). The Council on Public Transparency and Combating Corruption is an advisory body for debating and recommending measures for controlling public financial resources, promoting transparency and combating corruption within the federal public administration. This includes: *i)* contributing to the formulation of policies, guidelines and projects; *ii)* suggesting improvements and integration of internal procedures; and *iii)* conducting studies and establishing strategies to substantiate legislative and administrative proposals in order to combat corruption and mobilise organised civil society. The council is chaired by the Comptroller General of the Union and is comprised of 20 members representing the federal public administration and citizens. The council meets every two months and can hold extraordinary meetings called by the chair. Citizens' representatives serve two-year terms, with the possibility of re-appointment (see Chapter 2).

The Commissions for the Co-ordination of Internal Control and Co-ordination of Administrative Discipline serve as advisory bodies for the federal public administration. The Commission for Co-ordination of Internal Control (*Comissão de Coordenação de Controle Interno*) serves the Internal Control System of the Federal Public Administration. It is tasked with, among other things, proposing measures to standardise, strengthen and evaluate internal control. The Commission for Co-ordination of Internal Control is made up of nine representatives from the internal control system and chaired by the Comptroller General of the Union. The Office of the Comptroller General of the Union notes that the Commission for Co-ordination of Internal Control has not convened since 2003. The Commission for the Co-ordination of Administrative Discipline (*Comissão de Coordenação de Correição*) is an advisory body that aims to promote integration and uniform understanding by organisational units of the Administrative Disciplinary System of the federal public administration. These systems and advisory bodies are discussed in Chapter 3 and Chapter 4, respectively.

Figure 1.3. **Organisation chart of the Office of the Comptroller General of the Union**

2010



Source: Office of the Comptroller General of the Union.

In 2007, the Office of the Comptroller General of the Union formulated an Institutional Integrity, Public Resources Control and Corruption Prevention Plan (*Plano de Integridade Institucional Controle dos Recursos Públicos e Prevenção da Corrupção*) outlining its basic guidelines, projects and actions for the period 2007-10 (see Box 1.1). It is the first plan of its type developed by the Office of the Comptroller General of the Union. The Plan was formulated by the Comptroller General of the Union and the Executive Secretary of the Office of the Comptroller General of the Union. Input was provided by the heads of the Office of the Comptroller General of the Union functional secretariats (*i.e.* Secretariat for Federal Internal Control, Secretariat of Corruption

Prevention and Strategic Information, Inspectorate General for Administrative Discipline and the Office of the Ombudsman General of the Union). The plan was shared with the Council for Public Transparency and Combating Corruption in June 2007, more for information sharing than deliberation. The process constituted the formalisation of ongoing activities. A Plan of Actions and Goals (*Plano de Ações e Metas*) has been formulated against which performance in fulfilling the programme can be measured. The Plan of Actions and Goals is revised every two years and reviewed twice each year (see *e.g.* CGU, 2009a).

Resource mobilisation and flexibility is not recognised as a problem within the Office of the Comptroller General of the Union. When first established in 2001, the Office of the Comptroller General of the Union had a total staff of around 2 000 officials. This included approximately 70 officials within the Inspectorate General of Administrative Discipline with the remainder allocated to the Secretariat of Federal Internal Control. This figure has increased steadily over time to include approximately 2 700 active public officials in 2010. It receives a lump sum appropriation for its operating expenditure but with a sub-limit on wages allowing it to reallocate material expenditure without approval from the Federal Ministry of Finance. It is not possible to carry over unused funds or appropriations from one year to another.

Table 1.7. **Resourcing of the Office of the Comptroller General of the Union**

A. Number of public officials[1]

Category	2001[2]	2005	2006	2007	2008	2009	2010
Supervisory and management officials	N/A	388	408	408	408	408	408
Other public officials	N/A	1 730	1 866	1 924	2 137	2 215	1 985
Total active public officials	N/A	2 154	2 310	2 368	2 581	2 659	2 719
Retirees and pensioners[3]	N/A	32	75	124	164	239	287
Total public officials	N/A	2 186	2 385	2 492	2 745	2 898	3 006

B. Budget appropriation (in millions BRL)

Expenditure type	2001[2]	2005	2006	2007	2008	2009	2010
Personnel	N/A	175.8	270.9	354.8	413.9	532.7	591.5
Materials	N/A	3.1	0.8	1.0	1.7	1.7	2.0
Capital	N/A	2.8	5.1	7.1	10.7	4.8	12.5
Other	N/A	53.9	45.4	51.8	58.6	60.8	90.8
Total	N/A	235.6	322.1	414.8	484.9	600.0	696.8

Notes:

1. Public official data refer to the month of November for each year surveyed.

2. In 2001 the Office of the Office of the Comptroller General of the Union was a secretariat linked to the Civil House of the Office of the President of the Republic. Beyond the aggregate budget of the Civil House budget, budget figures for the Office of the Comptroller General of the Union cannot be extracted for 2001.

3. In Brazil, retirees and pensioners are counted as part of the public sector workforce.

Source: Office of the Comptroller General of the Union.

Box 1.1. **Plan for Institutional Integrity, Public Resource Control and Corruption Prevention, Office of the Comptroller General of the Union**

The Office of the Comptroller General of the Union adopted in March 2007 an action Plan for Institutional Integrity, Public Resource Control and Corruption Prevention 2007-10. The plan describes the main guidelines or principles driving the action of the Office of the Comptroller General of the Union and outlines a series of projects and actions to be developed. The document was subsequently updated in March 2009.

Basic guidelines

1. **Ensuring that internal control fulfils its constitutional obligations** through both preventive actions (*i.e.* improving public management by supporting managers in the identification and correction of weaknesses) and corrective actions (*i.e.* addressing corruption by detecting irregularities and unlawful practices in a timely manner).
2. **Promoting administrative accountability as an effective means to avoid impunity** through the establishment and strengthening of an efficient administrative disciplinary system within the federal public administration led by the Office of the Comptroller General of the Union and operated by inspectorates (*corregedorias*) or disciplinary committees in federal public organisations.
3. **Emphasising preventive measures against corruption** through a focus on the early detection of potential problems in order to warn public managers of these risks.
4. **Inter-institutional co-operation** between the Office of the Comptroller General of the Union and other authorities responsible for defending public interests and improving public management, including the Federal Ministry of Justice; the Federal Ministry of Finance; the Federal Ministry of Planning, Budget and Management; the Office of the Federal Public Prosecutors, the Federal Court of Accounts and other control authorities at state and municipal levels.
5. **Promoting direct social control** including raising awareness and training of citizens, leaders and non-governmental organisations in the active monitoring of government policies, programmes and activities.
6. **Enhancing public transparency** of government policies, programmes and activities in order to facilitate direct social control.
7. **International co-operation** (both bilateral and within the framework of international organisations and treaties) to address corruption and obtain the support needed to transform Brazil into an international leader in the field of internal control and preventing corruption.
8. **Institutional strengthening** to improve the efficiency and expediency of the Office of the Comptroller General of the Union, adding value to existing work processes and improving management and operational capacity.

Box 1.1. **Plan for Institutional Integrity, Public Resource Control and Corruption Prevention, Office of the Comptroller General of the Union** *(cont'd)*

Projects and actions

9. **Improving the legal framework** notably through: *i)* drafting legislation concerning administrative sanctions and discipline, the criminisalisation of illicit enrichment, conflict of interest, freedom of information, lobbying, the liability of legal persons for corrupt practices, money laundering and criminal association; and *ii)* improving existing regulations regarding the procurement and administrative contracts, the control of voluntary transfers of federal resources to states and municipalities, and protected disclosures (*i.e.* whistleblower protection).

10. **Institutional strengthening** through: *i)* updating the structure of the internal control system as established by Federal Law no. 10 180/2001 (in particular assessing the functioning and efficiency of the Secretariat of Federal Internal Control and special advisors on internal control within federal public organisations); *ii)* developing the Office of the Comptroller General of the Union's virtual training programmes; and *iii)* strengthening the Office of the Comptroller General of the Union operational capacity including personnel training, review of existing processes and use of information technologies.

11. **Intensifying investigatory auditing** including: *i)* scaling up special audits of public organisations; *ii)* carrying out special investigations of voluntary transfers based on information obtained in routine audits or from the Department of Federal Police and the Office of the Federal Public Prosecutors; *iii)* examining and resolving external complaints (forwarding less serious claims to the relevant public managers); and *iv)* undertaking control actions over specific activities, *e.g.* public procurement, information technologies and personnel expenditure.

12. **Regular monitoring of the use of federal resources** through a number of routine and targeted actions, including: *i)* evaluating the implementation of government programmes; *ii)* the Accelerated Growth Programme; *iii)* systematically monitoring management actions; *iv)* auditing the use of federal funds transferred to municipalities, states, large municipalities and capital cities; *v)* supervising federal transfers to non-governmental organisations; *vi)* performing special account audits (*tomadas de contas especiais*) in partnership with the Federal Court of Accounts; and *vii)* auditing decisions regarding staff hiring, retirement and pensions.

13. **Adopting disciplinary actions** including the imposition of administrative sanctions on public officials and, more specifically, prioritising efforts to combat embezzlement (including monitoring the assets of federal public officials, improving existing detection mechanisms, and undertaking inquiries into the assets of public officials) and strengthening the disciplinary system (including encouraging the establishment of inspectorates or disciplinary committees within federal public organisations, improving the relevant regulatory framework and training officials to join disciplinary committees).

Box 1.1. **Plan for Institutional Integrity, Public Resource Control and Corruption Prevention, Office of the Comptroller General of the Union** *(cont'd)*

14. **Focusing on preventative actions** with a specific emphasis on: *i)* increasing public transparency by improving the Transparency Portal of the federal public administration and encouraging transparency within federal public organisations; *ii)* promoting a culture of integrity and ethics in federal public organisations through the prevention and management of conflict of interest and the establishment of ethics committees in all federal public organisations; *iii)* undertaking corruption risk mapping; *iv)* promoting direct social control through the Eagle Eye training programme and new partnerships with non-governmental organisations; and *v)* implementing international conventions ratified by Brazil and expanding existing co-operation in the areas of capacity building.
15. **Reinforcing the ombudsman system** by promoting the creation of new ombudsman units, carrying out capacity-building activities and workshops, and improving the ombudsman's interaction with citizens.

Source: Adapted from CGU (2009), *PAM: Plano de Ações e Metas – 2009/2010 da Controladoria-Geral da União*, [PAM: Office of the Comptroller General of the Union Plan of Actions and Targets – 2009/2010].

Public Ethics Commission

The Public Ethics Commission was established in 1999 to foster a culture of integrity within the federal public administration and address related challenges. At the time, the pressing challenges were: *i)* raising public awareness of what constitutes appropriate conduct by public officials and translating it into simple and easy-to-apply rules; *ii)* implementing these rules among high public officials; and *iii)* promoting the broader application of acceptable conduct by all federal public officials (CEP, 2001). Over time the commission has recognised the need to improve the quality and coherence of ethics management within the federal public administration, and to create awareness of standards of conduct at sub-central government levels (CEP, 2003). More recently, a growing emphasis has been placed on systematically evaluating ethics management within the federal public administration (CEP, 2006).

The Public Ethics Commission has three main functions. First, it is responsible for overseeing the conduct of high public officials and ensuring compliance with the Code of Conduct for High Officials in the Federal Public Administration. It widely disseminates the code, issues resolutions and guidance notes for its implementation and is available to resolve any questions concerning its interpretation. Second, the commission has the obligation to conduct investigations, either *ex officio* or upon receipt of a complaint, of possible breaches of ethics by high public officials. Third, the commission is the central unit of the Ethics Management System of the Federal Public Administration. In this capacity, it co-ordinates, evaluates and supervises the functioning of ethics committees within public organisations of the direct and indirect public administration. The latter task was formalised by Federal Decree no. 6 029/2007 regarding the Ethics Management System of the Federal Public Administration.

The Public Ethics Commission is composed of seven Brazilian citizens appointed by the President of the Republic for a staggered term of three years, with the possibility of extension for one additional term of three years. Commission members must demonstrate

a high moral character and have a flawless reputation and experience related to the public administration.[13] There is no confirmation of their appointment by the Federal Senate (as in the case of Brazil's Federal Court of Accounts or judiciary), because of concerns that this could politicise the Public Ethics Commission. Members do not receive any remuneration for their work on the commission; however, relevant travel and *per diem* expenditure is borne by the Civil House of the Office of the President of the Republic.

Commission members establish their own by-laws and annually elect their own president. All Public Ethics Commission deliberations are made by vote of a majority of its members, with the president holding the casting vote. In addition, and as necessary, the commission may convene at the initiative of any of its members. Specific and urgent matters are resolved through communication among commission members. The agendas of the meetings are formulated based on suggestions from any of its members or through the executive secretary. New issues may also be added to the agenda at the start of each meeting. Limited time available for discussion in person also means that agenda items are frequently postponed until subsequent meetings. In practice, as most commission members live outside Brasília (where meetings are convened) and the work of the commission is in addition to their occupation, face-to-face meetings typically happen only once every month.

The commission's technical and administrative activities are supported by an executive secretariat, linked to the Civil House of the Office of the President of the Republic. The executive secretariat is comprised of nine full-time officials. These are organised into two groups: one responsible for monitoring the Code of Conduct for the High Officials in the Federal Public Administration, the other responsible for the ethics promotion programme. Although all commission secretariat officials are seconded from other public organisations, up to 25% of the secretariat officials (*i.e.* 2 full-time officials) may be selected from the non-governmental sector. There are 9 full-time officials working in the Public Ethics Commission's executive secretariat; this has remained stable since its creation in 1999. During this same period the annual budget of the commission has more than doubled from BRL 150 000 (USD 90 000, EUR 66 000) to BRL 320 000 (USD 190 000, EUR 140 000).

Since its establishment, the Public Ethics Commission has issued an annual report on its activities. The report, which is typically around six pages, provides a textual discussion of the main activities, with some supporting statistics – but does not include a more general barometer of issues or trends over time. This is in line with the practices of most co-ordinating bodies that are required to publish an annual report. While the annual report is available on the website of the commission, it is not discussed by the National Congress. Rather, commission activities are presented in an amalgamated format with the 26 other units connected to the Office of the President of the Republic, with a total budget of BRL 9 billion.[14] In comparison, the United States Office of Government Ethics provides an annual report to Congress in conjunction with its annual budget request and includes a self-assessment of its progress in reaching its pre-determined goals. Based on this report, the United States Office of Government Ethics may be requested to testify before the Congress about its performance.

Department of Federal Police

The Department of Federal Police is responsible for investigating criminal offenses against the political and social order, protecting the Union's assets and interests, acting as marine, airport and border police, as well as the Union's judicial police. It also carries out

activities to prevent drug trafficking and smuggling that date back to its creation as a department in 1944, and investigates inter-state or federal crimes, as well as agrarian and land conflicts.[15] Although subordinate to the Federal Ministry of Justice, the Department of Federal Police retains full autonomy to investigate crimes falling within its remit. In 2009, the government tabled Bill no. 6 493 in the National Congress to create an Organic Law for the Department of Federal Police, focusing on its organisation and human resource management. The bill also aims to reinforce the systems of internal control by establishing a council to oversee police procedures, ethics and administrative discipline, while re-affirming the independence of investigative reports.

The Department of Federal Police is headed by a director general appointed by the Federal Minister of Justice. Each state has a superintendent subordinate to the director general. The Department of Federal Police has a presence in the states through approximately 110 delegations (*delegacias*) and advanced outposts (*postos avançados*) throughout the country. Delegations are created in medium and large towns as needed, and subordinated to the superintendents. Advanced outposts are smaller units without their own police force, receiving police officers from other units on a rotating basis. Some states, such as Rio Grande do Sul and São Paulo, have as many as 13-15 police units, while some geographically large states (*e.g.* Amazonas, Tocantins and Ceará) have only one police delegation each. The activities of the Department of the Federal Police are complemented by those of the federal highway, state civil and military police and, in a number of larger cities, municipal guard.[16]

Though the Department of Federal Police's involvement in operations is often the most visible one, it is an outcome of extensive co-operation with other public organisations such as the Office of the Comptroller General of the Union and the Secretariat of Federal Revenue. Senior police officials noted that the Office of the Comptroller General of the Union provides structured and consolidated information on suspected corruption, making it easier to initiate investigations. The Department of Federal Police works together with the Secretariat of Federal Revenue to gather banking and financial information necessary for investigations. Based on this information, the Federal Police conducts *diligências* (*e.g.* interceptions, wires, etc.) to gather evidence as a basis for arrests.

The Department of Federal Police has developed a database to collect and report information on investigations and other actions. Between November 2003 and December 2010, the financial division of the Department of Federal Police organised 135 operations related to corruption and embezzlement within the public administration. A total of 1 909 people were arrested, 283 of whom were public officials. Disaggregate information on the cases was not available. The Organisation of American States noted in 2008 that the Department of Federal Police carried out 40 special operations to combat corruption in 2007 alone, discovering and hitting places throughout the country where public funds were being diverted. The investigations fingered members of the legislature, the executive and the judiciary, resulting in the arrest of 316 public officials and 13 federal police officers (OAS, 2008).

Box 1.2. **Department of Federal Police investigations of corruption in Brazil**

Arantes (2011) analyses 600 Department of Federal Police operations between 2003 and 2008 to identify the types of crimes, states covered in the operations and whether corruption was the primary or secondary crime. Secondary crimes are defined where corruption was not the original focus of the investigation, but rather an outcome following an arrest and prosecution. For example, the arrest of a federal highway police officer on bribery charges as a result of an operation against a cross-border smuggling ring.

His analysis found that 23% of these cases targeted political corruption as a primary crime by public officials. In other words, the main crime was direct misappropriation and embezzlement of public funds or organised fraud in state activities (authorisation, granting and/or inspection of public interests, goods or economic activities). It excludes cases in which the corruption of public officials was a secondary dimension of the main crime. Including cases where corruption was the secondary crime, political corruption rises from 23% to 39%.

Of these operations, 61% took place in a single state, 12% took place in 2 states and 27% took place in 3 or more states. Some cases were investigated by the Federal Police because of their cross-border nature. Others were investigated because local institutions are so corrupt that local actors are no longer able to police themselves. In others, the Federal Police have used a federal offence to investigate secondary crimes at the sub-national level.

Source: Arantes (2011) The Federal Police and the *Ministério Público*," in T.J. Power and M.M. Taylor (eds.) *Corruption and Democracy in Brazil: The Struggle for Accountability*, University of Notre Dame Press.

From 2003, the Department of Federal Police began to focus more systematically on public relations, including releasing brief summaries of all its operations. In 2006, according to the Federal Police's own Communications Division, it was the focus of 15 000 reports in the media or 41 references a day (Arantes, 2011). This has been facilitated, in part, by symbolic naming of operations. For example, "Fiscal Adjustment" cracked down on a gang that defrauded the pension system; "Ctrl+Alt+Del," "Pen Driver" and "Trojan Horse" arrested cyber-criminals who raided Internet bank accounts; "Freud" uncovered a scheme of fraudulent psychological disability pensions; "Aphrodite", "Bye-Bye Brazil", "Sodom" and "Exodus" dismantled rings trafficking Brazilian women; "Locusts" dismantled a scheme whereby fraudulently registered public officials siphoned funds from the payroll in the state of Roraima; "Switzerland" cracked down on money laundering; "Pinocchio" arrested public officials from the environmental agency (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*) accused of turning a blind eye to illegal woodcutting; "Vampire" revealed fraud in the Federal Health Ministry's bidding for blood by-products.

In 2008, the Department of Federal Police launched a strategic plan covering 2008 through 2022. One of its priorities is to fight corruption within the public sector, including cases involving high officials. As part of this strategy, a plan is underway to establish specialised units focusing on corruption in all 26 states, in much the same way that there are specialised units for trafficking and smuggling. Previously, the function of fighting corruption was shared among different units. Eleven such units were established in 2009 and 2010 as part of a pilot project. The Federal Ministry of Planning, Budget and Management has subsequently approved the Department of Federal Police plan to roll out these special anti-corruption units. The Department of Federal Police also considers that its work with public organisations prevents misconduct and corruption. Details on these preventative actions were not available.

A significant renewal of the Department of Federal Police has driven the increase in investigations since 1997. Renewal has come in response to the low prestige of public officials and a reputation for corruption and abuse of power within the department. Media reports previously suggested that police paid for their own ammunition, waited seven months for travel reimbursements and shared computers in groups of five (Nicaretta, 2007). Beginning in 1997, the Department of Federal Police underwent an internal restructuring and all police officials were required to hold a college degree. This change resulted in the replacement of two-thirds of the Department of Federal Police officials (Taylor and Buranelli, 2007). All police entrants are now required to undergo background checks during recruitment with an emphasis on ethical behaviour.

Since 2001, the number of public officials within the Department of Federal Police has increased significantly with the creation of new posts. This includes opportunities for officers to work in specific states, especially in the north and north-east where the Department of Federal Police's structure is quite small, and where corruption and organised crime are considered more problematic. The Department of Federal Police now has approximately 11 300 active officials, including detectives, forensics experts, agents, registrars and fingerprint experts. The budget of the Department of Federal Police nearly doubled between 2002 and 2008, from USD 925 million to USD 1.5 billion (Arantes, 2011).

Table 1.8. **Resourcing of the Department of the Federal Police Department**

A. Number of officials

	2001	2005	2006	2007	2008	2009	2010
Active administrative group, of which:	N/A	3 353	3 358	3 198	3 080	2 900	2 787
Senior level	N/A	303	321	290	273	251	228
Intermediate level	N/A	3 023	3 011	2 895	2 802	2 626	2 536
Auxiliary	N/A	27	26	25	5	23	23
Active police group, of which:	N/A	8 874	9 894	10 526	11 107	11 487	11 303
Federal agents	N/A	5 332	5 798	5 950	6 241	6 418	6 293
Deputies	N/A	1 192	1 377	1 592	1 767	1 859	1 839
Registrars	N/A	1 344	1 588	1 685	1 693	1 627	1 597
Detectives	N/A	514	654	825	937	1119	1115
Forensic experts	N/A	492	477	474	469	464	459
Total	N/A	12 227	13 252	13 724	14 187	14 387	14 090

B. Budget appropriation (in billions BRL)

	2001	2005	2006	2007	2008	2009	2010
Personnel	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Non-capital expenses	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Note: N/A = not available.

Source: Department of Federal Police.

In many cases the Department of Federal Police has been a target for corruption rather than a means to control it. The police's position in the front line against crime and attempts by criminals to protect their corrupt activities make it vulnerable to the risk of corruption. Accusations of abuse of power, torture and excessive use of force, committed mainly by police officers and penitentiary agents have been frequent (Alburuerque and Paes-Machado, 2004; Caldiera, 2002; Peters, 2006; Ahnan, 2007; United Nations, 2008). According to Latinobarometer (2008), approximately 55% of citizens state a high or very high probability that they would bribe a police officer – though it does not distinguish the Department of Federal Police from other police forces in Brazil. In contrast, a survey by the Federal University of Minas Gerais in partnership with Vox Populi (2009), a research institute, noted 84% of interview subjects identify the Department of Federal Police as the leading public organisation involved in fighting corruption, higher than the Office of the Comptroller General of the Union, the judiciary and the National Congress.

The Transparency Programme of the Federal Ministry of Justice, established by Federal Ministry of Justice Ordinance (*Portaria Ministério da Justiça*) no. 3 746/2004, aims to facilitate public monitoring of the activities and expenditures of the federal ministry and its subordinate departments and agencies, as well as to improve mechanisms for internal control and the fight against corruption. In the case of activities by the Departments of Federal Police and the Federal Highway Police, disclosed information is provided in summary form to protect the confidentiality of activities and security of its public officials. Brazil has four distinct police oversight mechanisms, located in three separate branches of government: the judiciary (military courts), the executive (Internal Affairs department and the police department Ombudsman), and the public prosecutors. The first police Ombudsman was set up in São Paulo in 1995, Pará in 1996, Minas Gerais in 1997; and Rio de Janeiro and Rio Grande do Sul, both in 1999 (Macaulay, 2002; Lemgruber, 2002). Information on the functioning of measures to embed high standards of conduct and prevent corruption is not available.

Office of the Attorney General of the Union

The Office of the Attorney General of the Union has a dual role: to provide legal advice to the President of the Republic on administrative actions and to represent the federal government before the courts in legal disputes. Its functions are defined in the 1988 Federal Constitution together with the judiciary and public prosecutors. However, the Office of the Attorney General of the Union was only established as a separate public organisation in 1993 when it separated from Office of the Federal Public Prosecutor.

In its advisory role, the Attorney General of the Union provides guidance to the federal public administration on the legality of the administrative acts, particularly regarding public policies, public procurement and policy formulation (federal laws, provision measures, federal decrees, resolutions, etc.). For example, in 2010 the Attorney General of the Union released a booklet summarising information regarding political rights and standards of conduct guiding the actions of public officials during the federal election year. It has also produced leaflets, in partnership with the Office of the Comptroller General of the Union and the Civil House of the Office of the President of the Republic, on the standards of conduct distributed to incoming federal ministers in January 2011. In its litigation role, the Attorney General of the Union represents the federal government in judicial and extra-judicial proceedings, including the collection and recovery of claims attributed to administrative misconduct.

Table 1.9. **Resourcing of the Office of the Attorney-General of the Union**

A. Number of public officials[1]

Category	2001	2005	2006	2007	2008	2009	2010
Supervisory and management officials	N/A	N/A	575	575	614	614	614
Other public officials	N/A	N/A	7 618	8 117	8 778	9 084	9 504
Total active public officials	N/A	N/A	8 193	8 692	9 392	9 698	10 118
Retirees and pensioners[2]	N/A	N/A	110	183	323	504	717
Total public officials	N/A	N/A	8 303	8 875	9 715	10 202	10 835

B. Budget appropriation (in billions BRL)

Expenditure type	2001	2005	2006	2007	2008	2009	2010
Personnel	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Non-capital expenses	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Notes: N/A = not available.

1. The data refer to the month of November for each year surveyed.

2. In Brazil, retirees and pensioners are counted as part of the public sector workforce.

Source: Ministry of Planning, Budget and Management, "Thematic Summaries" (*Sínteses Temáticas*), *www.planejamento.gov.br/secretarias/upload/Arquivos/seges/sinteses_tematicas/ST_AGU.pdf* and "Statistical Bulletin of Staff" (*Boletim Estatístico de Pessoal*), *www.servidor.gov.br/publicacao/boletim_estatistico/bol_estatistico.htm.*

Office of the Federal Public Prosecutors

The functions and powers of the Office of the Federal Public Prosecutor are extremely broad. The functions listed in the 1988 Federal Constitution can be grouped in three broad categories:

- **Protection of legality:** intervening in judicial procedures and other matters to ensure that laws are respected. It may directly ask for judicial review to assess the constitutionality of a given law (*ação direta de inconstitucionalidade*), the *habeas corpus* action, requests for injunctions, civil public actions, etc. The prosecutor-general must always be heard in actions of unconstitutionality and in all cases examined by the Federal Supreme Court.
- **Protection of public-interest:** defending public and social assets, cultural heritage, the environment, collective rights and interests (in particular, those of indigenous peoples, the family, infants, adolescents and the elderly) and "non-disposable rights" (*direitos indisponíveis*, *e.g.* freedom of speech and belief or equal protection).
- **Criminal procedure:** participating in criminal procedures, both investigating crimes and holding the accusation against alleged offenders in court, as well as controlling the police's investigatory activity (*i.e.* ensuring that evidence has not been obtained in breach of applicable laws and that human rights have been respected).[17]

The combination of powers has led some commentators (*e.g.* Arantes, 2004) to conclude that Brazil's public prosecutors are a fourth branch of government.

The Office of the Federal Public Prosecutor's protection of public-interest function brings it closer to a traditional (parliamentary) ombudsman than to a regular prosecuting authority. This is particularly the case given the institutional position of the Ombudsman General of the Union and ombudsman units in Brazil as part of the executive, without any independent decisionary powers (see Chapter 2). Consumer rights and environmental issues have been among the top concerns in cases protecting the public interest. Compared to a typical ombudsman, Brazil's public prosecutors can intervene proactively in court to protect individual and collective rights and interests. Commonly, this is done by bringing a public civil action (*ação civil pública*) before a court. If criminal behaviour is present, prosecutors can also bring the alleged offenders to court through the so-called public criminal action (*ação penal pública*).

In addition, the Office of the Federal Public Prosecutor may issue recommendations aimed at improving public services, notifications or requests (*e.g.* for information and documents and to initiate police investigations). In some cases, and particularly where the public interest is at stake, the investigated party can avoid a judicial procedure by signing a so-called "Terms of Adjusted Conduct" (*Termos de Ajustamento de Conduta*), a document entered into by the parties before the public prosecutor committing to comply with certain obligations in order to address the problem in question and/or to compensate any loss. Settlements have indeed become a very powerful instrument in the hands of the Office of the Federal Public Prosecutor, as those being prosecuted have an incentive to negotiate rather than to be subject to long and costly litigation. It is estimated that about 90% of cases involving collective and diffuse interests are settled (Mueller, 2010).

An administrative impropriety action (*ação de improbidade administrativa*) is the main instrument used by Office of the Federal Public Prosecutor when public funds are diverted or misused. These actions normally follow findings made by the Office of the Comptroller General of the Union and the Federal Court of Accounts. In some cases, public prosecutors may act upon complaints by individuals. The consequences for the offenders are very serious, as they may lose their mandate, be suspended for a period of eight to ten years, and be compelled to repair damages or reimburse diverted funds.

Finally, the Office of the Federal Public Prosecutor has a key role in the surveillance of the entire criminal system, using its broad powers to inspect prisons and police stations. Prosecutors are indeed responsible for ensuring that no conviction is obtained by violating human rights or by breaching any other law. However, some claim that this does not happen in practice (International Bar Association, 2010).

The co-operation between the Office of the Comptroller General of the Union and the Office of the Federal Public Prosecutor is of paramount importance. Between 70-80% of the investigations carried out by the Office of the Federal Public Prosecutor are initiated based on information brought by the Office of the Comptroller General of the Union, while the remaining 20-30% of cases are initiated on the motion of the Office of the Federal Public Prosecutor. Co-operation between the Office of the Federal Public Prosecutor and other organisations (*e.g.* the Federal Court of Accounts, parliamentary commissions of inquiry, etc.) normally happens when such authorities encounter evidence of criminal activity and forward the case to the prosecutors for further action.

The Office of the Federal Public Prosecutor is one body of the Office of the Public Prosecutor of the Union (*Ministério Público da União*). The Office of the Public Prosecutor of the Union also includes a number of other organisations, mirroring the structure of the judicial system.[18] The division of work between state and federal prosecutors follows the respective jurisdictions of the federal and state court systems, as

detailed in the 1988 Federal Constitution.[19] For instance, federal prosecutors can pursue criminal actions to denounce authorities such as the President and Vice President of the Republic, federal ministers, federal deputies and federal senators. In addition, federal prosecutors are competent to prosecute all crimes against the federal public administration, including all forms of corruption (*e.g.* embezzlement, bribery, etc.).

The Prosecutor General of the Republic (*Procurador-Geral da República*) heads the Office of the Federal Public Prosecutor.[20] The Office of the Federal Public Prosecutor is organised into:

- The Superior Board: a body composed of ten sub-prosecutors general (including the prosecutor general and deputy prosecutor General), which operates as the supreme collegiate body of the institution, producing rules and regulations and approving the budget.
- The Boards of Co-ordination and Review (*Câmaras de Coordenação e Revisão*), in charge of discussing and co-ordinating the position of the Office of the Federal Public Prosecutor in six thematic areas (*e.g.* criminal matters, environment and heritage, etc.).
- The Magistrate of the Public Prosecutor (*Corregedoria-Geral*): competent to deal with internal disciplinary cases.
- The Federal Prosecutor for Citizens' Rights (*Procuraduria Federal dos Direitos do Cidadão*): the body in charge of dealing with issues related to individual constitutional rights.

No figures are available on the number of public officials within the Office of the Federal Public Prosecutor. At present, there are 12 000 public prosecutors (including both federal and state prosecutors) or 4.22 for every 100 000 Brazilians. Prosecutors are among the best paid public officials in the country (Mueller, 2010) and enjoy relatively favourable working conditions for Brazilian standards (International Bar Association, 2010). In order to ensure their impartiality, public prosecutors are subject to a number of prohibitions laid down in the 1988 Federal Constitution, including the practice of law or the performance of any political or commercial activity.

The 1988 Federal Constitution establishes a number of safeguards to protect the independence of the Office of the Federal Public Prosecutor, and each and every of its members, in fulfilling its mandate. First, and as mentioned above, the 1988 Federal Constitution explicitly recognises the functional, administrative and financial autonomy of the public prosecutors. Crucially, the Office of the Federal Public Prosecutor prepares its own budget and sends it to the National Congress for approval. Second, the Prosecutor General has a fixed, renewable two-year term and is appointed by the President of the Republic. Candidates must, however, be a professional public prosecutor and the appointment must be endorsed by an absolute majority of the Federal Senate.[21]

Finally, prosecutors' functional independence is guaranteed by the 1988 Federal Constitution. In contrast to the hierarchical principle directing public prosecution bodies in most other countries, Brazil's prosecutors are subordinate to one head in administrative terms, but each member is free to act according to their conscience and the law. While the prosecutor general can decide in some cases whether the Office of the Federal Public Prosecutor will go to court, individual public prosecutors have considerable leeway to prioritise their own legal cases (Taylor and Buranelli, 2007). Moreover, prosecutors benefit from significant guarantees to protect their independence. These include the fact

that they can only be removed from office through a judicial decision, they can only be transferred if justified in the public interest and they cannot have their salaries reduced. The distribution of cases among prosecutors in the same body is done in accordance with objective criteria which cannot be subsequently altered.

Similarly to what happened with the judiciary (discussed below), the significant degree of independence afforded to the Office of the Public Prosecutor prompted a debate on the need to introduce mechanisms of accountability. Constitutional Amendment no. 45/2004 tried to address these concerns through the establishment of the National Council of the Office of the Public Prosecutor (*Conselho Nacional do Ministério Público*). Created through Constitutional Amendment no. 45/2004 to address concerns about the lack of accountability of public prosecutors, the council is in charge of the external administrative and financial control of the Office of the Public Prosecutor, both at the federal and the state levels. It is headed by the prosecutor general and its composition includes prosecutors from different federal and state bodies, practicing lawyers, as well as external councillors appointed by the National Congress. Its functions and institutional layout mirror the National Council of Justice. Other information on the functioning of measures to embed high standards of conduct and prevent corruption is not available.

Empirical data suggest that public property and administrative impropriety constitute the main focus of public civil actions launched by public prosecutors. However, the effectiveness of these actions can be limited, as they often do not succeed in the judiciary "be it for the slowness of proceedings, or the numerous dilatory appeals, or for the more restrictive attitude on the part of judges regarding the [prosecutors'] authority to act in that area" (Arantes, 2004). As an example, of the 572 actions brought by prosecutors in the city of São Paulo between 1992 and 2004, less than 5 had been definitively resolved by the end of that period (Arantes, 2004). Public prosecutors have responded to the slowness of the justice system through an increased use of "terms of adjusted conduct" and out-of-court settlements.

The significant uncertainty surrounding a matter of constitutional interpretation has considerably hindered the role of Brazil's public prosecutors in criminal cases. The 1988 Federal Constitution lists the powers and functions of public prosecutors and empowers them to initiate civil investigations, but not expressly in the criminal area.[22] In contrast, it confers upon the police the duty to investigate crimes, although it remains silent on whether this function is to be carried out on an exclusive basis.[23] This ambiguity led to what some considered as a "legal vacuum." In 2003, a federal deputy from the state of Maranhão indicted as a result of an investigation led by the public prosecutor challenged the constitutionality of the public prosecutors' role in opening criminal investigations. Only in March 2009 did the Federal Supreme Court (*Supremo Tribunal Federal*) confirm the constitutionality of such investigations. However, there is no consolidated jurisprudence on this matter and, as a result, co-ordination between the police forces and public prosecutors are still problematic in practice.

National Strategy against Corruption and Money Laundering

Given the plurality of public authorities dealing with integrity and anti-corruption policy in Brazil, the National Strategy Against Corruption and Money Laundering (*Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro*) was established in 2003. Co-ordinated by the Federal Ministry of Justice, the National Strategy aims to foster co-ordination among public authorities in the various stages of

preventing and combating money laundering and, since 2005, corruption. The Integrated Management Cabinet for Prevention and Combat Against Corruption and Money Laundering is composed of 60 public organisations of the executive, the Office of the Public Prosecutor of the Union, the National Congress and the judiciary.[24] These authorities meet once a year to review the effectiveness of co-operation and co-ordination in combating organised crime and corruption. In addition, a core group of National Strategy members meets every three months. The annual meeting also determines the main objectives and targets for the National Strategy for the following year. In the context of the National Strategy, a major effort has been made to improve the co-ordination between the Office of the Comptroller General of the Union, the Office of the Public Prosecutor of the Union and the Federal Court of Accounts.[25]

Since 2008, the National Strategy Against Corruption and Money Laundering has had three working groups: *i)* the Legal Working Group, which reviews national legislation and proposes legal reforms; *ii)* the Operational and Strategic Working Group, which identifies domestic trends and emerging typologies of money laundering and corruption; and *iii)* the Information Technology Working Group, which provides technology support to the other working groups and facilitates the integration of national databases. The working groups meet in the days before the annual plenary and on an *ad hoc* basis.

Some key results from the National Strategy Against Corruption and Money Laundering with regard to preventing and combating corruption include: *i)* the creation of the National Registry of natural and legal persons declared ineligible before or barred from contracting with the public administration; *ii)* the expansion of the voluntary resource transfer monitoring and control system, including the computerisation of accountability procedures; *iii)* the launch of a consolidated public registry of persons subject to administrative sanction decisions who are of particular interest to anti-corruption and anti-money laundering efforts; and *iv)* the drafting of legislation to regulate the liability of legal persons for acts committed against the public administration. At its 7th meeting, in November 2009, the National Strategy also approved 21 actions to be adopted in 2010, including publication in the *Government Gazette* of the National Registry of Individual Taxpayer (*Cadastro de Pessoa Física*) the number of officials appointed to public office and a risk analysis of fraud in public procurement procedures and contracts in connection with the 2014 World Cup and the 2016 Olympic Games.

A proposal to establish a Brazilian Anti-corruption Strategy was also adopted at the 7th Meeting of the National Strategy in November 2009. The strategy was to be developed by the Office of the Comptroller General of the Union with a view to strengthening Brazilian anti-corruption policies and devoting more focused and in-depth attention to the issue. The proposed strategy was to encompass: *i)* ethics education, including business ethics and social responsibility; *ii)* state reform and governance; *iii)* transparency and public oversight; and *iv)* knowledge generation on corruption, public procurement procedures and public spending. The Office of the Comptroller General of the Union will co-ordinate the related activities, which will involve gathering inputs from the other participating public organisations, preparing the proposal and managing the respective discussions. As a starting point for the Brazilian Anti-corruption Strategy, the Office of the Comptroller General of the Union put forth a proposal to develop a document setting out a consolidated summary of the government's initiatives in the field. The goal is to produce a report with a diagnostic analysis, background description, conclusions and indicators on corruption prevention in Brazil. In 2010, the Office of the Comptroller General of the Union and the Federal Ministry of Justice decided to keep one single strategy: the National Strategy Against Corruption and Money Laundering. Working

groups dealing with the two topics may be created. However, because many of the same public authorities represented in both strategies would be the same and many of their themes would be connected, it was decided to keep one single strategy.

Oversight by other branches of the federal government

This section introduces the roles of the National Congress, the Federal Court of Accounts and the federal judiciary in supporting integrity and the prevention of corruption within the federal public administration.

National Congress

The National Congress consists of the Federal Senate and the Chamber of Deputies. Both chambers operate in plenary and through standing committees organised by thematic area. There are currently 11 committees within the Federal Senate and 20 within the Chamber of Deputies. *Ad hoc* committees may also be created. Both chambers operate as a single body in connection with certain matters of particular significance, including the federal budget and examination of presidential vetoes. The 1988 Federal Constitution specifies the instruments for the National Congress to exercise oversight over the federal executive. These include provisions for the impeachment of the President and Vice President of the Republic and federal ministers;[26] Federal Senate confirmation of high officials;[27] congressional commissions of inquiry (*comissões parlamentares de inquérito*);[28] permanent oversight committees;[29] and public hearings.[30] The remainder of this section focuses on the National Congress' control over the federal budget and congressional commissions of inquiry.

Control over the federal budget and public expenditure

The Planning, Budget and Control Joint Committee (*Comissão Mista de Planos, Orçamentos Públicos e Fiscalização*) of the National Congress is responsible for examining and voting the Draft Annual Budget Law (*Projeto de Lei Orçamentária Anual*). It is composed of 84 members of Congress (21 federal senators and 63 deputies), with an equal number of substitutes, selected according to party proportionality. The Planning, Budget and Control Joint Committee is organised into four sub-committees arranged by area of competence: *i)* inspection and control of budget execution; *ii)* revenue evaluation; *iii)* projects with possible irregularities; and *iv)* budget amendment admissibility. Each year, federal senators and deputies, as well as the political parties with higher representation in the National Congress, alternate in the main Planning, Budget and Control Joint Committee positions, which include the president, three vice presidents and rapporteurs (*relatores*) responsible for key planning and budget instruments.

In Brazil, the President of the Republic has line-item veto power. A presidential veto of the Draft Annual Budget Law can only be overturned by an absolute majority of members of Congress. Executive vetoes vary in scope and weight. Line-item vetoes are an intrusive form of executive power that allows the executive to reject individual items in the budget passed by the legislature. Package vetoes, on the other hand, allow the executive only to veto the budget in entirety. Many OECD member countries do not grant the executive any type of veto power over the legislature's approved budget, although veto powers are more common in presidential political systems such as Mexico and the United States (see Table 1.10). In Brazil, the President of the Republic last used the line-item veto in 2010.

Box 1.3. **Permanent oversight activities by the National Congress**

Lemos (2006) examines the permanent oversight activities of the National Congress between 1988 and 2004 to understand general forms of legislative prerogative. Ongoing oversight activities provide insight about the everyday activities that focus the attention of the National Congress on the government. Specifically, the survey focuses on oversight initiative bills, resolutions of inquiry, summoning of ministers and public hearings. These activities accounted for approximately 40% of the National Congress' total workload, excluding purely committee-based activities (*e.g.* parliamentary commissions of inquiry, investigations and testimonies), during this period. This level has been relatively stable since the early 1990s, compared to 8% in 1988. This change is attributed to democratisation and a pro-active role of the federal executive in legislative agenda setting.

The vast majority of permanent oversight activities were resolutions of inquiry and committee hearings. Between 1988 and 2004, 18 438 resolutions of inquiry were introduced (15 341 in the Chamber of Deputies and 3 097 in the Federal Senate). Resolutions can be written quickly, as they do not need to be negotiated with the committees, parties or caucuses. The burden of providing information also falls on the executive. If it fails to provide information within 30 days, the executive has committed a crime of negligence. During the same period there were 1 495 committee hearings (865 in the Chamber of Deputies and 630 in the Federal Senate) – or more than 2 per week during non-recess periods, between 1995 and 2004. Committee hearings can address a variety of issues, including those raised by members of Congress and non-governmental organisations. Of those surveyed, 18% focused on economic issues, 13% on infrastructure and 9% on each education and healthcare.

Oversight initiative bills and summons of Cabinet ministers were the least used permanent oversight tools between 1988 and 2004. There were 353 oversight bills (337 in the Chamber of Deputies and 16 in the Federal Senate) and 344 summons of federal ministers (201 in the Chamber of Deputies and 126 in the Federal Senate). The low use of both can be attributed, in part, to their high costs in terms of time, expertise and collective action. Moreover, in the case of oversight initiative, the burden of producing information falls upon the author of the bill.

Source: Lemos, L.B. (2006), "Horizontal Accountability in Brazil: Congressional Oversight of the Executive Branch", *Centre For Brazilian Studies Working Paper*, Number CBS-76-06, University of Oxford, Oxford.

Table 1.10. **Executive power to veto the budget approved by the legislature in Brazil and select countries**

No veto power	Package veto power[1]	Line-item veto power[2]
Australia, Canada, France, Germany, Italy, Japan, Korea, Portugal, Spain, United Kingdom	United States (2007)	Argentina (2007), Chile, Mexico, **Brazil (2010)**

Notes: Based on Q. 44 "Does the executive have the power to veto the budget approved by the legislature?" Numbers in parenthesis indicate the last year that the veto power was exercised.

1. Package vetoes allow the executive to veto entire budgets passed by the legislature.

2. Line-item (or partial) vetoes enables the executive to reject individual items in a budget bill.

Source: Curristine, T. and M. Bas (2007), "Budgeting in Latin America: Results of the 2006 OECD Survey," *OECD Journal on Budgeting*, 7(1): 1-37, OECD Publishing, Paris, doi: 10.1787/budget-v7-art4-en; OECD (n.d), *ICT database*, OECD, Paris.

In the course of budget execution, the National Congress receives bi-monthly expenditure reports continuously from the federal executive. These reports cover all

expenditures by administrative units, together with comparisons between year-to-date expenditure and original estimates for most categories. The Planning, Budget and Control Joint Committee also manages "Siga Brasil", a database reflecting the status of budget execution on a monthly basis, which is open to the public (see Chapter 2).[31] The executive's year-end accounts are prepared on an annual basis by the Office of the Comptroller General of the Union; they are presented to the National Congress and published by April 15 of the following year (*i.e.* 4.5 months after the end of the budget year). The year-end accounts include a descriptive report by public organisation and programme, but do not contain data on the actual outcomes of individual programmes. They also provide a detailed explanation of the differences between the figures in the budget law and the actual expenditure levels (*i.e.* for each programme).

Within the Chamber of Deputies, the Commission of Financial Auditing and Control (*Comissão de Fiscalização Financieira e Controle*) is responsible for scrutinising the audited year-end accounts. In addition, the commission monitors and reviews the activities of the federal executive from various perspectives (accounting, financial, budgetary, operational and asset), without prejudice to the work of other commissions (and in particular the Planning, Budget and Control Joint Committee, which is competent to monitor budget execution according to the 1988 Federal Constitution).[32] In addition, the Commission of Financial Auditing and Control is responsible for following up on requests from the Federal Court of Accounts to suspend a challenged contract. In this regard, Brazil's Commission of Financial Auditing and Control shares some of the functions of a dedicated public accounts committee, such as exists in the United Kingdom and other Commonwealth countries (*e.g.* Australia, Canada and South Africa).

While the Federal Court of Accounts provides support and technical advice, the National Congress is constitutionally responsible for controlling governmental actions. The Federal Court of Accounts has traditionally been diligent in preparing its audit report. However, the National Congress has experienced very significant delays in approving the accounts. For example, the accounts for FY 1990, 1991 and 1992, produced under the Collor de Mello administration, are still awaiting approval. The 2005 year-end accounts for 1993 and 1995 (the Franco administration); as well as 1996-98 and 2000-01 (the Cardoso administration) were only approved in December 2002. The situation has improved only modestly in recent times. As an example, the 2005 year-end accounts were only approved in August 2010. Information on when the FY 2007, 2008 and 2009 audited year-end accounts were approved by the National Congress is not available.

Congressional commissions of inquiry

The second main instrument of control over the federal executive is congressional commissions of inquiry. The 1988 Federal Constitution allows both chambers to create temporary commissions with the support of one-third of the members of Congress. Congressional commissions of inquiry are established on an *ad hoc* basis to investigate and discuss a specific issue or a possible irregularity. Commissions can be located in the Federal Senate, the Chamber of Deputies or jointly between both chambers. According to the 1988 Federal Constitution,[33] congressional commissions hold the power of judicial authorities including the possibility of accessing bank and tax information, hearing witnesses, requesting documents, etc. Like any other congressional commission, their composition must follow the proportional representation of the different parliamentary groups. At its first meeting, commission members elect a president who, in turn, appoints a *rapporteur* in charge of elaborating the conclusions of the commission. The deliberations of the commissions are normally reflected in a final report describing the

main findings. Based on this report, the commission may decide to forward the document to the public prosecutors for further legal action. The report can lead to the formulation of recommendations to the federal executive or even to draft legislation to address the problems identified.

Box 1.4. **Effectiveness of congressional commissions of inquiry in Brazil**

Souza (2006) examines all Federal Senate and all joint congressional commissions of inquiry between 1989 and 2005 to assess their effectiveness as mechanisms of horizontal accountability. (Thus, the research excludes all Chamber of Deputy congressional commissions of inquiry.)

The main findings of this study put into question the effectiveness of these commissions:

- There were 91 (36 Federal Senate and 55 joint) congressional commissions of inquiry established during this period. After a peak during the Collor de Mello administration (particularly between 1991 and 1993), fewer were created during the Cardoso administration, with another peak in 2003. The number of commissions established slowed down during electoral years (*i.e.* 1990, 1994, 1998, 2002 and 2006).
- Two main parties – the Brazilian Democratic Movement Party (*Partido do Movimento Democrático Brasileiro*) and the Liberal Front Party *(Partido da Frente Liberal*) – have held most of the key positions in the commissions under study. Together, members of these 2 parties have presided over 64% and served as *rapporteurs* for 78% of the surveyed commissions.
- Of the 91 commissions surveyed, only 55% were effectively established (*i.e.* actually convened) and only 35 (39%) produced a final report. Of the 91 commissions, 48 (53%) dealt with illicit behaviour by public officials.
- The limited effectiveness of the commissions surveyed was attributed to a number of factors including lack of personnel, poor quality of final reports, lack of qualified technical staff, outdated legal framework, and others.
- The study also reveals a significant lack of co-ordination between the commissions and the public prosecutors. It finds that the provisions of Federal Law no. 10 001/2000, regarding procedures for public prosecutors and other authorities to follow after the conclusion of congressional commissions of inquiry appear to be entirely ignored in practice. This law provides that the Office of the Federal Public Prosecutors must inform the National Congress within 30 days of receiving a congressional commission of inquiry report about any follow-up actions it intends to adopt and subsequently provide periodic updates every 6 months on the status of its follow-up actions.

Figueiredo (2003) examines congressional commissions of inquiry formed in the Chamber of Deputies during 2 democratic periods, between 1945 and 1964 and 1988 and 1999, to examine their impact. The research finds significant differences both in terms of the number of congressional commissions of inquiry proposed by deputies and their rates of success. The number of commissions between 1945 and 1964 was much higher than the period between 1988

Box 1.4. **Effectiveness of congressional commissions of inquiry in Brazil** *(cont'd)*

and 1999, regardless of political party affiliations. Moreover, between 1945 and 1964 more than 90% of all commissions actually convened in comparison with 30% between 1988 and 1999. Another notable difference between the 2 periods is that between 1988 and 1999, congressional commissions of inquiry became solely an instrument of opposition parties. In contrast, between 1945 and 1964 commissions were similarly used as an instrument of the President's political party.

Source: Figueiredo, A.C. (2003), "The Role of Congress as an Agency of Horizontal Accountability: Lessons from the Brazilian Experience," in S. Mainwaring and C. Welna (eds), *Democratic Accountability in Latin* America, Oxford University Press, Oxford; Barreto de Souza (2006), Comissões Parlamentares de Inquérito Como Instrumentos de Accountability Horizontal: Análise do Período 1989-2005" [Parliamentary Commissions of Inquiry as Instruments of Horizontal Accountability: 1989-2005], Universidade de Brasília.

Integrity within the National Congress

The 1988 Federal Constitution establishes a number of prohibitions on federal senators and deputies, under penalty of loss of office, such as:

- entering into or remaining in a contract with a public organisation, unless the contract is executed in accordance with uniform clauses;
- accepting or exercising any remunerated position, function or employment, including those from which they may be dismissed without cause in a public organisation;
- owning, controlling or directing a company that in any way benefits from a contract with a public organisation, or delivering a remunerated service therein;
- holding an office or function in a public organisation from which they may be dismissed without cause;
- serving as an attorney in a case in which involves a public organisation; and
- holding concurrently more than one publicly elected position.

In addition, the two chambers of the National Congress have established their own codes of conduct: the Federal Senate's Code of Ethics and Parliamentary Decorum and the Chamber of Deputies' Code of Ethics and Parliamentary Decorum. The codes for both chambers prohibit members of Congress, their spouses, domestic partners or legal entity controlled by them from entering into a contract with any government-controlled financial institution. Members of Congress are also prohibited from directing or managing any media organisation. Moreover, members of Congress must, upon taking office or on being appointed to a permanent or temporary committee, file a declaration of current or past economic or professional activities. While in office, serving on a committee or in plenary, members of Congress must disclose any specific interests that they may have in an issue. Upon doing so they may either exclude themselves from any role in the discussion of that issue and any subsequent votes or explain the reasons why, in their own judgment, participating in the discussion and voting does not give rise to a conflict of interest. The Federal Senate and Chamber of Deputies Boards of Ethics and Parliamentary Decorum may conduct proceedings to apply the appropriate sanctions for

non-observance of their respective codes. The disciplinary sanctions include written warning, censure, temporary suspension and loss of office. Information on sanctions imposed by these boards is not available.

There is a widespread perception of impunity within the National Congress. According to *Congreso em Foco*, a non-governmental organisation focusing on the activities of the National Congress, as of June 2010, 21 federal senators and 147 deputies had legal proceedings pending in the Federal High Court.[34] However, the number of sentences condemning public officials is very low. According to the Brazilian Judges Association, there were no sentences issued by the Federal High Court finding public officials guilty of criminal offences – including corruption – between 1988 and 2007. Most of the 130 cases handled by the Federal High Court were either still ongoing in 2007 (52 cases) or had been remanded to lower courts (46 cases). During the same period, the High Court of Justice sent down only 5 sentences declaring public officials guilty of a criminal offence (out of 483 cases). This is the same number of cases terminated as a result of the death of a defendant and well below the number of cases filed in application of the relevant statute of limitation (71 cases) (Associação dos Magistrados Brasileiros, 2007).

In an attempt to counter public perceptions about the legislature and to co-ordinate anti-corruption efforts in the National Congress, a group of members from different parties created the so-called "Parliamentary Front to Combat Corruption" (*Frente Parlamentar de Combate à Corrupção*) in 2004. The front, which includes about 130 members of Congress, has supported a number of legislative initiatives to address corruption. In December 2009, the front published a list of 14 initiatives ready for a vote in order to pressure the National Congress to speed up the process. In addition, members of Congress participate in the Latin American Chapter of Global Organisation of Parliamentarians Against Corruption. Created in 2002, the Latin American Chapter aims to strengthen the fight against corruption, as well as promote transparency and accountability. This chapter has adopted an action plan entitled "Strategy to Strengthen the Role of Legislative Assemblies in the Americas in Fighting Corruption." The strategy lists a number of initiatives, including the development of a template of a regional regulatory framework to be used as a model for action at the national level, and the preparation of a practical guide regarding political control and budgetary oversight.

Federal Court of Accounts

The 1988 Federal Constitution provides for external control of the federal public administration by the National Congress, with the assistance of the Federal Court of Accounts.[35] The Federal Court of Accounts performs its auxiliary role to the National Congress in two main ways. First, it issues a "preliminary opinion" (*parecer prévio*) on the government's year-end accounts as technical input into the work of the Planning, Budget and Control Joint Committee. The audit report and preliminary opinion must be prepared within 60 days of the receipt of the accounts from the National Congress. In practice, the Federal Court of Accounts typically recommends the approval of the accounts with a number of reservations and recommendations.[36] For example, in its review of the 2008 government accounts, the Federal Court of Accounts formulated reservations in connection with, *inter alia*: *i)* the absence of a cost-based system to evaluate and monitor budget execution; *ii)* flaws in the planning of operational and financial targets for governmental actions; and *iii)* the absence of registration of income arising from the indirect public administration (*e.g.* the Fund for Universal Telecommunications Services) (TCU, 2010).

Second, the Federal Court of Accounts has a consultative function to provide permanent advice to the National Congress on budget execution. The 1988 Federal Constitution gives the National Congress and congressional committees the possibility of requesting the Federal Court of Accounts to carry out specific inspections and audits.[37] In recent years, the National Congress has increasingly utilised this resource. In 2009, for instance, there were 246 audits initiated at the request of the National Congress (or 28% of the total) (TCU, 2010). The National Congress frequently asks the Federal Court of Accounts to assign auditors to its own inquiries. The Federal Court of Accounts also often participates in hearings at the request of different congressional committees.

The focus of the Federal Court of Accounts has progressively expanded over time. First was a change in the focus of external control, from legality (*legalidade*) to legitimacy (*legitimidade*) and efficiency (*economicidade*). External control is therefore not only limited to the conformity of budget execution with applicable laws and regulations but also encompasses an assessment of the operational aspects of governmental action. Second has been the object of external control. Its powers have been expanded through a series of laws, including: *i)* to monitor public procurement and administrative contracts and to process complaints filed by contractors, suppliers and citizens (Federal Law no. 8 666/1993); *ii)* to register and monitor the mandatory disclosure of assets and income for positions and functions in the executive, legislature and judiciary (Federal Law no. 8 730/1993); and *iii)* to comply with legislated expenditure ceilings established under the Fiscal Responsibility Law and alert the legislature of cases of non-compliance (as per Complementary Law no. 101/2000).

The Federal Court of Accounts' enforcement function allows it to impose sanctions. Sanctions may include fines and declarations of ineligibility to hold public office for a given period of time, as well as the temporary debarment of suppliers that have engaged in irregular activities in the context of public procurement. The Federal Court of Accounts can define the financial loss resulting from wrongdoing by public officials and hold them directly responsible for that damage, imposing fines and ordering the repayment of the loss. For example, in FY 2009, the Federal Court of Accounts imposed fines on 317 officials, totalling BRL 1.2 billion in penalties and damages; 44 public officials were separated from duty and declared ineligible to hold public office for a period between 5 and 8 years; and 85 suppliers were debarred from public contracting with the federal government for a period typically ranging between 3 and 5 years. The Federal Court of Accounts website contains a list of all suspended officials and debarred suppliers.[38] At present, 120 suppliers are ineligible to obtain public contracts with the federal government and 362 officials are barred from holding public office.

In addition, the Federal Court of Accounts compiles and maintains a registry listing all officials who have engaged in serious misconduct in the management of public funds. This Registry of Officials with Irregular Accounts (*Cadastro de Responsáveis com Contas Julgadas Irregulares*) is forwarded to the electoral authorities in July of every election year. Individuals listed in this registry are declared by the electoral courts ineligible to run for municipal, state or federal office. Non-governmental organisations and the general public can access this registry through the Federal Court of Accounts' website.[39]

While the Federal Court of Accounts has significant judicial or quasi-judicial enforcement powers, it does not belong to the judiciary. In this regard, the Brazilian supreme audit institution is similar to that in France, Germany, Italy, the Netherlands and Spain (see Table 1.11).[40] Since the Federal Court of Accounts has no criminal prosecution

powers, it liaises with the Office of the Federal Public Prosecutors to ensure that cases of administrative misconduct involving public funds are duly prosecuted. The Office of the Federal Public Prosecutors has a unit (including a general prosecutor, three sub-general prosecutors and four prosecutors) specifically devoted to ensure legal enforcement of Federal Court of Accounts' activities. Together with the Office of the Attorney General of the Union, the Office of the Federal Public Prosecutors can enforce the payment of fines and compensations imposed by the Federal Court of Accounts.

Table 1.11. **Typologies of supreme audit institutions**

Typology	Examples
Independent authority entirely at the disposition of the legislature	Argentina, Australia, Canada, South Africa, United Kingdom, United States
Legislative auditor, served by an external authority	Sweden
Independent "court," without juridical functions, partly serving the executive	Germany, Netherlands
Independent court with juridical functions, partly serving the executive	**Brazil** France, Italy, Portugal Spain
Independent authority under the executive	Chile, Japan, Korea

Source: Adapted from Blöndal, J. and T. Curristine (2004), "Budgeting in Chile," *OECD Journal on Budgeting*, 4(2): 7-46, OECD Publishing, Paris, doi: 10.1787/budget-v4-art8-en; Lienert, I. and M.-K. Jung (2004), "The Legal Framework for Budget Systems: an International Comparison", *OECD Journal on Budgeting*, Special Issue, 4(3): 11-479, OECD Publishing, Paris, doi: 10.1787/budget-v4-3-en.

Organisational independence

The Federal Court of Accounts is governed by a body of nine auditors-generals or ministers. Three ministers are appointed by the President of the Republic, two of whom are chosen from among Federal Court of Accounts officials, subject to endorsement by the Federal Senate. The other six ministers are selected by the National Congress: three by the Federal Senate and three by the Chamber of Deputies. Prior to the enactment of the 1988 Federal Constitution, the executive had the prerogative to appoint all Federal Court of Accounts ministers. The nine Federal Court of Accounts members select a president each year. Ministers are appointed for life, although a mandatory retirement age has been fixed at 70, and they benefit from the same rights, privileges and immunities as the members of the Federal Supreme Court. Ministers normally work in a plenary or in two chambers, composed of four ministers each.[41] Decisions can be voted on, and a majority vote is enough to approve a given decision. However, the practice appears to be to adopt decisions by consensus among all Federal Court of Accounts ministers.[42]

The Federal Court of Accounts' legal framework contains numerous instruments and safeguards to protect its independence (*e.g.* budget autonomy) and requires certain qualifications for ministers (including standards of professional expertise and integrity). Ministers of the Federal Court of Accounts must satisfy the following requisites: *i)* more than 35 years of age but less than 65; *ii)* moral standing and irreproachable reputation; *iii)* vast juridical, accounting, economic, financial and public administration knowledge; and *iv)* more than 10 years of experience or professional activity drawing upon this knowledge. In practice, the individuals selected as ministers (with the exception of the two members that must be chosen amongst the Federal Court of Accounts staff) are often linked with the political establishment. In its current composition, six out of nine Federal Court of Accounts ministers have held elected positions in the past. Some consider the

Federal Court of Accounts to be a reward for retiring politicians or a stepping stone in a political career.

Federal Law no. 9 755/1998 specifically provides for the creation of an Internet portal to be maintained by the Federal Court of Accounts compiling information on budget execution at the different levels of government, public revenue and procurement. In 2004, the Federal Court of Accounts created an ombudsman in charge of receiving individual complaints about the misuse of federal resources, as well as the functioning of the Federal Court of Accounts itself. The ombudsman office can be reached by phone, email and mail, as well as through an electronic form on the Federal Court of Accounts portal.[43] Information on the functioning of measures to embed high standards of conduct and prevent corruption is not available.

Overall, the Federal Court of Accounts is a widely respected public organisation. Its recommendations have helped to improve internal control in many government programmes. The impact of the Federal Court of Accounts' work is substantial, as shown by the estimates of monetary "savings" for the federal government. These estimates indicate that in budget years 2008 and 2009, the work of the Federal Court of Accounts yielded a savings of BRL 27.6 billion and BRL 22.3 billion – or BRL 27.6 and BRL 18.6 for every BRL 1 allocated to the Federal Court of Accounts – respectively (see Table 1.12). These compare dramatically to savings achieved between 2005 and 2007 of around BRL 5 for every BRL 1 allocated. These savings have been achieved by a staff of approximately 2 700 officials organised in 3 main units: *i)* the General Secretariat of the Presidency (*Secretaria Geral da Presidência*); *ii)* the General Secretariat of Administration (*Secretaria-Geral de Administração*); and *iii)* the General Secretariat of External Control (*Secretaria-Geral de Controle Externo*). The latter focuses on external control over governmental activities through units located in Brasília and in the 26 states. In 2006, a special technical unit in charge of Information Technology, the Information Technology Secretariat (*Secretaria de Fiscalização de Tecnologia da Informação*), was created to oversee the management and use of Information Technology resources of the federal public administration.[44] In 2009, 3 units were set up within the General Secretariat of External Control to focus exclusively on public works reflecting increased scrutiny over such expenditure.

Table 1.12. **"Savings" attributed to Federal Court of Accounts' actions**

Measure of savings	2005	2006	2007	2008	2009	2010
Total savings (in billions BRL)	3.5	2.8	4.9	30.8	22.3	N/A
Savings in BRL for 1 BRL allocated to the Federal Court of Accounts	5.0	5.3	5.2	27.6	18.6	N/A

Note: Data for 2010 was unavailable at the time of preparing this report.

Source: Federal Court of Accounts, 2005-09 *Annual Reports*.

While the Federal Court of Accounts has been given extensive enforcement powers, these powers are often ineffective. The Federal Court of Accounts' decisions are frequently contested in the court system and the appeals process can substantially prolong any final judgment. During this time the responsible official may no longer be in office or the assets have already been transferred to a safe haven. The Federal Court of Accounts is also often criticised for spending too much time and resources on routine activities rather than focusing on individual investigations (Santiso, 2009). These routine activities are: *i)* the preparation of the annual audit of the federal government's year-end accounts; *ii)* the review of the private interest disclosures filed by approximately 3 000 public

officials managing public funds; and *iii)* the review of administrative decisions relating to certain personnel matters (*e.g.* appointments, retirement and pensions, etc.). In 2009 these activities amounted to over 140 000 decisions of which less than 3 300 were declared illegal (TCU, 2009). A more selective approach to auditing, based on an *ex ante* identification of risks and closer co-operation with internal audit could improve the performance by the Federal Court of Accounts.

Finally, there is no systematic follow-up by the Federal Court of Accounts on the implementation of its recommendations. In Germany, the Federal Court of Accounts releases a "Results Report" two years after each Annual Report to systematically monitor the implementation of each recommendation that was made. The Status Reports published by the Canadian Auditor General since 2002 have a similar function, focusing on the most significant issues.

Federal judiciary

The main authorities within the federal court system are the Federal Supreme Court (*Supremo Tribunal Federal*) and the High Court of Justice (*Superior Tribunal de Justiça*). The Federal Supreme Court is composed of 11 ministers who are appointed for life by the President and confirmed by the Federal Senate. The Federal Supreme Court is the highest judicial authority with jurisdiction over constitutional matters. Its jurisdiction was narrowed substantially following the promulgation of the 1988 Federal Constitution; previously, the Federal Supreme Court was the court of final appeal in virtually all areas of the law. The Federal Supreme Court also reviews any charges against high public officials, including the President and Vice-President of the Republic and the members of Congress. The High Court of Justice was created in 1988 as a federal court immediately below the Federal Supreme Court in an attempt to reduce the workload at the top of the federal judiciary. The High Court of Justice is the highest appellate instance for non-constitutional matters involving federal legislation. All 33 High Court of Justice magistrates are nominated by the President of the Republic based on a list of candidates proposed by the judiciary, the Office of the Public Prosecutors (*Ministério Público*) and the Brazilian Bar Association (*Orden dos Advogados do Brasil*).

Five regional federal courts composed of seven judges nominated by the President of the Republic and responsible for hearing appeals against first-instance decisions complete the federal justice system.[45] Federal courts are responsible for cases of national interest and crimes included in international agreements. Federal judges' duties include hearing most disputes in which one of the parties is the federal Union. Thus, federal courts will generally prosecute those crimes of national and international interest, including corruption involving federal public officials. Parallel court systems exist, each with first instance, appellate and supreme bodies. These include the ordinary criminal and civil courts at the state level and specialised court systems dealing with electoral, labour and military matters. State courts would prosecute those cases of more interest to the particular state, such as corruption involving state or local public officials. Municipalities do not have their own justice systems, and therefore, depending on the nature of the claim, must resort to state or federal justice systems. Out of a total of more than 13 700 judges, approximately 11 100 perform their functions in state courts (CNJ, 2010).

The 1988 Federal Constitution guarantees the judicial branch's functional, administrative and financial autonomy. Only appointments to the superior courts are political and subject to approval by the legislature. The minimum and maximum ages for appointment to the superior courts are 35 and 65 years; mandatory retirement is at age 70.

The 1988 Federal Constitution places holds the Federal Council of Justice (*Conselho da Justiça Federal*) responsible for administrative and budget supervision of the first- and second-instance bodies belonging to the federal court system (it does not cover the state court systems). The Federal Council of Justice has total control over the judiciary's administrative, personnel and disciplinary affairs, as well as substantial leeway in the definition of its budget, which is submitted directly to the National Congress. The procedural independence of the judiciary's budget is somewhat unique in comparison with OECD member countries (see Table 1.13).

Table 1.13. **Process for formulating the judiciary's budget proposal in Brazil and select countries**

Follows same procedures as other public organisations	Included by central budget authority without any changes	Submitted directly to legislature for approval
Argentina, Australia, Canada, France, Germany, Japan, Korea, Portugal, South Africa, United Kingdom	Mexico, Spain, United States	**Brazil**

Note: Based on Q. 29 "In practice, which option most accurately describes the way in which the budget is prepared for the judiciary?"

Source: OECD (n.d.), *ICT database*, OECD, Paris.

In December 2004, Constitutional Amendment no. 45 was promulgated, amending over 20 provisions of the 1988 Federal Constitution that relate to the judiciary. The main objectives of the reform were: *i)* to reduce congestion within the judicial system; and *ii)* to create the National Council of Justice (*Conselho Nacional da Justiça*) to introduce a mechanism of external control and accountability of the judiciary. These reforms represented a major development for the modernisation of the state following over a decade of efforts to do so. For example, during the 1993 constitutional reform process, the section of the 1988 Federal Constitution dealing with the judiciary received the highest number of amendment proposals. However, out of the 3 900 proposals made in 1993, none were accepted and this section of the Federal Constitution was left untouched.

Amendment no. 45/2004 awards the Federal Supreme Court the possibility of making some of its decisions binding for inferior authorities.[46] This is done through a mechanism is called *súmula vinculante*, whereby the Federal Supreme Court explicitly indicates so in the text of a judgment and receives a vote of at least two-thirds of its members. Prior to 2004, Brazil's courts were largely free to decide any case without regard for any precedent of a superior court on similar matters. This led to a situation where inferior courts routinely overturned or stalled legislative decisions while freely setting precedents on civil, criminal and sometimes constitutional issues. The result of this phenomenon is not only ambiguous and inconsistent judgments but also a backlog in Brazilian courts, which were filled with briefings that could otherwise be dismissed by invoking judicial precedent. This reform fell short of establishing a *stare decisis* principle establishing that all precedents of superior courts would be binding under inferior courts. Outside the limited set of binding case law produced by the Federal Supreme Court, lower courts in Brazil are still entirely free to decide cases based exclusively on their own interpretation of the law.

In 2006, the National Congress took a further step by adopting two pieces of legislation. Federal Law no. 11 276/2006 enables superior courts to reject appeals if they consider that the lower court's decision is in line with a previous decision of the Federal

Supreme Court or High Court of Justice (the so-called *súmula impeditiva de recursos*). Federal Law no. 11 418/2006, amending the Civil Code, limits the possibility of bringing an extraordinary appeal to the Federal Supreme Court in situations where the appellant can establish that the case has a public interest. Together with the 2004 constitutional amendments, these reforms appear to have decreased the flow of litigation between lower and higher courts. The "congestion rate" of second instance regional federal courts has decreased by 7% since 2004, though its case workload has increased. At the first instance courts the congestion rate, despite showing some initial improvement between 2004 and 2006, has returned to pre-2004 levels of congestion (CNJ, 2010).

Amendment no. 45/2004 also establishes the National Council of Justice (*Conselho Nacional de Justiça*) as a key actor to increase transparency and accountability within the judiciary.[47] The council is responsible for external control of the administrative and financial operation of all other judicial authorities. Its main tasks are to guarantee the autonomy of the judiciary while complying with the rules applicable to courts and judges (embodied in the 1988 Federal Constitution and Complementary Law no. 35/1979, the Organic Law of the Judiciary, *Estatuto da Magistratura*). The National Council of Justice can produce rules, recommendations and guidelines to regulate the administrative and financial operation of judicial authorities. It is also responsible for investigating and punishing any irregularities in the judiciary (*e.g.* misuse of public resources, irregularities in contracts and procurement and access examinations). The creation of the National Council of Justice was quite controversial and led to a court challenge by the Brazilian Judges' Association (*Associação dos Magistrados Brasileiros*) in December 2004. The Federal Supreme Court confirmed the constitutionality of the National Council of Justice in April 2005 by a 7-4 majority. The National Council of Justice was finally established in June 2005.

The National Council of Justice was created in response to concerns that the 1988 Federal Constitution granted the judiciary excessive autonomy, leading to what some had labelled "hyper-autonomy and insulation" (see Santiso, 2003; International Bar Association, 2010). This situation arose as a consequence of efforts to protect the independence of the judiciary from external influence during the drafting of the 1988 Federal Constitution. Thus, and in contrast to many Latin American countries where strengthening the judiciary's independence has been a priority, many calls for judicial reform in Brazil arose from a perception of excessive independence and lack of accountability. In 2005, Transparency International noted that the judiciary is often defined as a "black box," isolated and lacking transparency, dedicated to preserving corporate privileges and unaccountable to citizens.[48] This accountability deficit also proved particularly expensive for the country's finances. For example, between 1987 and 1999, personnel costs in the judiciary increased by 760% (compared, for instance, with 220% for the executive branch) (Santiso, 2003).

The National Council of Justice is composed of 15 members elected for a period of 2 years with the possibility of one re-election. The council comprises of the President of the Supreme Court, the President of the National Council of Justice, eight judges and magistrates from different levels and court systems, two public prosecutors (one federal and one state), two lawyers appointed by the Brazilian Bar Association and two citizens of "notable legal knowledge and unblemished reputation" selected by the Federal Senate and the Chamber of Deputies. Thus, out of 15 members of the National Council of Justice, 6 can be considered external to the judiciary.

Exercising its normative powers, one of the first decisions adopted by the National Council of Justice in October 2005 was the removal from office of all relatives of judges performing functions within the justice system (a common practice in many courts until then).[49] Another example of the National Council of Justice's normative power was the September 2008 adoption of a Code of Ethics applicable to all judges and magistrates. The National Council of Justice also established in March 2009 an ombudsman office to receive complaints over the functioning of the judicial system as a whole, itself included.[50] More recently, the National Council of Justice Resolution no. 102/2009 introduces a significant degree of transparency in the use of public resources and the adoption of decisions by judicial bodies, by providing for the periodic publication of budgets, contracts, personnel costs, salaries, etc. With this and other measures aimed at rationalising expenditure, the National Council of Justice has been able to cut the annual rate of increase of expenditure almost by half, from 14% between 2004 and 2006 to approximately 7% in 2007 and 2008 (CNJ, 2010).

Administrative disciplinary proceedings within the judiciary are initiated by the National Council of Justice. The Council's Inspectorate (*Corregedoria Nacional de Justiça*) examines over 70% of administrative disciplinary proceedings within the judiciary. The remaining 30% are examined by the Tribunals' Inspectorate. These actions may respond to complaints or *ex officio* disciplinary investigations that arise in relation to judges and magistrates. Whenever the findings of an administrative disciplinary proceeding handed by the Inspectorate is appealed, it is examined by a committee of five National Council of Justice councillors, which may impose a sanction, including removal from service. Since the creation of the National Council of Justice in 2005, more than 100 judges have been removed from service. The National Council of Justice has also created, through Resolution no. 44/2007, a registry of all public officials and politicians found guilty of administrative impropriety (*Cadastro Nacional de Condenações Cíveis por Atos de Improbidade Administrativa*). The registry is available to the general public and shared with other federal authorities, such as the Office of the Comptroller General of the Union, the Federal Court of Accounts and the Federal Ministry of Justice. The registry only displays information of condemnation proceedings that were terminated and in which the involved actors were convicted.

In addition to these normative and enforcement tasks, the National Council of Justice has developed a number of actions aimed at improving the efficiency of the judiciary. For example, the council has launched a National Management Strategy aimed at reducing the backlog of pending cases; is establishing internal control units within judicial authorities (mandated by National Council of Justice Resolution no. 86/2009) and is leading the push to develop and expand the use of information technologies (see National Council of Justice Resolution no. 70/2009). In addition, the National Council of Justice has made a remarkable effort to compile and systematise data in connection with the Brazilian judiciary. The council's "Justice in Numbers" (*Justiça en Números*) initiative compiles judicial statistics, greatly contributing to transparency and accountability in the court system. This has benefited from efforts to integrate the information systems of the judicial system (see National Council of Justice Resolution no. 46/2007). Such data was virtually non-existent prior to 2007. The National Council of Justice is currently working on the implementation of the national electronic process, which is intended to be completed by end of 2011.

In parallel, civil society organisations have taken actions to denounce the limited effectiveness of the judicial system. For instance, Transparência Brasil has developed a methodology to assess the performance of the Brazilian judiciary in the context of its

Meritíssimos project. The project, still in a pilot form and for the time being limited to the Federal Supreme Court, developed performance indicators to evaluate the time that individual members of the judiciary take to resolve a matter. Using data on all ongoing procedures, Transparência Brasil publishes the number of pending procedures handled by each minister of the Federal Supreme Court (*i.e.* the procedures where each justice is supposed to deliver the opinion of the court), as well as the expected time of resolution for each minister. At present, Federal Supreme Court Judges have between 12 500 and 4 100 pending procedures each and the expected time for the resolution of a case varies between 80 and 34 weeks (Transparência Brasil, 2010).

The accountability problem facing Brazil's judiciary is compounded by a slow court system. A 2005 Report of the Special Rapporteur on the Independence of Judges and Lawyers of the UN Commission of Human Rights cites "notorious delays" among the main shortcomings of Brazil's judicial system, which it calls excessively bureaucratic with emphasis on procedure and process and too little regard for substantive right. Many cases are "resolved," *i.e.* terminated, after a long period of litigation, due to a procedural mishap or mistake by one of the parties – such as missing a deadline, forgetting to attach a required document, etc. The result is to make judgements very slow, uncertain and costly (Coutinho and Rabelo, 2003). Between 1989 and 2002, the number of cases increased almost 11-fold, while judges could only issue 4.76 times more decisions. The result of this phenomenon is a massive backlog of cases awaiting resolution in Brazilian courts. It was estimated that in 2004 it would take judges 5 to 8 years to resolve all pending cases if no new cases were brought. The ultimate impact of these delays is a restriction in access to justice, which is considered as too expensive and slow (Sadek and Tereza, 2004).

The UN Special Rapporteur on the Independence of Judges and Lawyers (2005) noted in November 2004 that the competitive examinations to enter the federal and state benches have not always been conducted in an anonymous and transparent manner and further noted a tendency to nepotism in the appointment of judicial support staff. Moreover, in recent years, some judges have been entangled in corruption scandals. Perhaps the most well known of those scandals was unveiled in the "Anaconda" (same name in Brazilian Portuguese) operation carried out by the Department of the Federal Police in October 2003. The investigation revealed that a number of judges had negotiated lenient sentences with criminals. Eight individuals, including a federal judge, were arrested and tried. Allegations of wasteful spending, nepotism and corruption are also common within the judiciary. For instance, in 1994, the Superior Labour Court (*Tribunal Superior do Trabalho*) alone spent approximately USD 400 million, above the total budget appropriations allocated to both chambers of the National Congress for the same year (Santiso, 2003).

There are indications that many corruption cases never reach the judiciary. A recent Brazilian study assesses the efficacy of judicial action against corruption by comparing cases punished by administrative committees with criminal and civil judicial proceedings of the same cases. The preliminary results show that the Brazilian judicial system is highly ineffective in fighting corruption. After focusing on the list of public officials dismissed for bureaucratic corruption in a number of major ministries (including the Federal Ministries of Finance; Planning, Budget and Management; Industry; Agriculture; and Foreign Affairs) between 1993-2005 and cross-checking those lists with the judicial databases covering all civil or criminal procedures (both ongoing and resolved) within the federal justice system, only 34% of all officials dismissed for corruption face criminal charges (de Alencar et al., 2010).

As a reflection of these problems, public perceptions of the Brazilian judiciary show a significant degree of discontent. Public trust in the judiciary remains very low, with approximately 60% of the population declaring to have little or no confidence in judges (Latinobarometer, 2008). The Brazilian Bar Association (2003) found that the judiciary is the second least-respected institution in the country, with 38% of respondents stating that they have no respect for the court system.[51]

Oversight by non-governmental actors

This section introduces the roles of non-governmental actors in overseeing the federal public administration. The discussion focuses on the media, private sector and civil society.

The media

The 1988 Federal Constitution provides for freedom of speech and of the press.[52] The National Telecommunications Agency and the Federal Ministry of Justices' Secretariat for Economic Law work to ensure that information and communication technologies operate in a free, fair and independent manner, under the rule of law. These federal authorities have an inter-agency agreement defining their respective competencies. The Secretariat for Economic Law is authorised under the Federal Law no. 9 472/1997, regarding general telecommunications, to have the final word when dealing with anti-trust issues, such as market concentration and price setting. There are no specific legal or economic factors that limit competition with respect to digital technologies. The Brazilian Internet Steering Committee, established in 1995 by the Federal Ministries of Communication and Science and Technology, aims to guarantee transparency and social participation in issues related to Internet governance. (The Committee was subsequently formalised by Federal Decree no. 4 829/2003, regarding the creation of the Brazilian Internet Steering Committee.) Representatives from the government, the private sector, academia and non-government organisations sit as members. Since 2004, representatives from civil society have been democratically elected to participate in discussions and to debate priorities for the Internet together with the government.[53]

Brazil boasts a dynamic and diverse media that present an array of opinions on social and political issues, as well as criticism of the government and its policies. Although the penetration of print media is low, it plays an active role in denouncing corruption and in defining the agenda of radio and television stations. Brazil has a diversified newspaper market with more than 500 dailies, though only 4 sell more than 200 000 copies per day *(Folha de S. Paulo, O Globo, Extra* and *O Estado de S. Paulo*). There are 3 main weekly newsmagazines (*Veja* with 1.1 million copies sold per week, *Época* with 440 000 copies per week and *IstoÉ* with 360 000 copies per week). Broadcasting has a more significant penetration. There are 1 681 AM stations and 1 987 FM stations nationwide. Television is the most important news source in Brazil with more than 90% of households having at least 1 television set. National television networks are concentrated by five main channels that share the largest portion of viewers: *Globo, Bandeirantes, SBT, Record* and *Rede TV*. All five are privately owned. The *Globo* Organisation dominates television media and accounts for 52% of all domestic TV viewership, including Brazil's main network, *TV Globo*. It also owns and produces *Jornal Nacional*, a main source of political information (Porto, 2011), and *O Globo*, the third most circulated newspaper in Brazil, in addition to other print and news outlets.[54]

Brazil has made significant gains in expanding Internet access and mobile phone usage in recent years. More than 1 000 Internet service providers now operate in the country, according to the Brazilian Association of Internet Service Providers (*Associação Brasileira de Provedores de Acesso, Serviços e Informações da Rede Internet*). The four largest companies – Terra, UOL, IG and Yahoo! – hold more than 50% of the market share. The country has the largest population of Internet users in Latin America and the fifth largest in the world.[55] According to the Institute of Geography and Statistics (*Instituto Brasileiro de Geografia e Estatística*), only 35% of Brazil's population had access to the Internet in 2008. Though this has increased from 20% in 2005 it is still far below that in many OECD member countries. A lack of infrastructure affects large segments of users, mainly in rural areas, and is the primary barrier to Internet connectivity. In comparison, Internet penetration is over 90% in Korea, and around 40-45% in Portugal and Spain. Brazil's figures are more on par with Chile (32%) but much higher than in Mexico (10%) (OECD, n.d.). In Brazil, as in many Latin American countries, the adoption of mobile technologies is high and has largely outpaced Internet adoption. In 2008, more than 50% of Brazil's population had mobile phones, whereas this number was below 35% in 2005.

There have been an increased number of *exposés* about political corruption during the last decade. For example, in 2005, a series of investigations widely covered by the media brought to light corrupt procurement practices by the postal service (*Correios do Brasil*) and resulted in the creation of a congressional commission of inquiry. In the same year, the media played an active role in uncovering the details of a scandal involving alleged monthly payments to representatives of the National Congress by members of the Lula administration and high-ranking officials of the Workers' Party (*Partido dos Trabalhadores*). The increase in the number of *exposés* has been attributed to various factors, including political democratisation, the emergence of a dynamic media market with greater financial autonomy from the state and the strengthening of journalistic professionalism (Porto, 2011).

Investigative journalism in Brazil appears to be a growing into a more institutionalised subject area. The Brazilian Association of Investigative Journalism (*Associação Brasileira de Jornalismo Investigativo*) was established in 2002 with the intent of being a forum for discussion and sharing experience. It has approximately 1 800 associates. A 2004 survey of journalists considered investigating government claims (66%), broadly a "watchdog role," as the most important of all "the things the media do." This was perceived to be more important than getting information to the public quickly (64%) and providing analysis of complex problems (60%) (Herscovitz, 2004). Investigative journalism in Brazil is constrained in part, however, by the absence of freedom of information legislation. However, a number of policies foster active transparency within the federal government, particularly in relation to government expenditure. The Transparency Portal of the federal public administration represents a significant institutional step in making information on public expenditure available on a daily basis. A number of shortcomings currently exist in the Transparency Portal of the Federal Public Administration, including an inability to extract expenditure data as is necessary for investigative journalism (see Chapter 2).

Concerns still remain over media ownership, as well as censorship of and violence against the media. Brazil also boasts a close, and at times perceived as democratically unhealthy relationship between politicians and the media. According to *Donos da Mídia* (meaning "media owners" in Brazilian Portuguese), an independent project maintained by volunteers, in 2008, Brazil had 271 politicians engaged, in one way or another, in

over 300 media outlets. Many of them not only hold directorship positions but proprietorship of these outlets. One in every five legislators on the Congressional Committee on Science, Technology, Communication and Information (*Comissão de Ciência e Tecnologia, Comunicação e Informática*) has business connections to television and radio stations (Freedom House, 2009). Recent numbers suggest an even greater overlap between media ownership and politicians. Media reports have called attention to the number of television and radio licenses awarded in 2010, noting that the figures are approximately 3 times above the annual average. Almost 60% of the licenses granted or renewed in 2010 have gone to politicians. The government claims that this has occurred due to new managerial practices in the Federal Ministry of Communications.[56]

There have been proposals to amend the 1988 Federal Constitution and make it illegal for public officials, including members of Congress, to own media outlets such as television and radio stations. In November 2008, the Chamber of Deputies organised a public hearing with citizen's representatives to discuss ways to improve transparency and participation in licensing processes. Historically, citizens have not been given a voice in such hearings (Freedom House, 2009). The issue failed to gain legislative support during congressional sessions. Other similar proposals currently in the National Congress have not mobilised sufficient political capital to be pushed forward.

In April 2009, Brazil's Federal Supreme Court completely repealed the Press Law (Federal Law no. 5 250/1967). The court ruled 7-4 that the law was incompatible with the 1988 Federal Constitution. The law was created with the intent of limiting opposition against the government by stipulating certain restrictions for the practice of journalism. It requires Brazilian journalists to hold a degree in journalism and be registered with the Federal Ministry of Labour in order to practice professionally. Moreover, the law allowed for the sentencing and incarceration of journalists for alleged press offences. Journalists have in the past, during the military dictatorship, been sentenced to jail when reporting on government corruption. Enacted during Brazilian military rule, the law had not been regularly enforced since 1988. Elements of this law, allowing for prison sentences for defamation and insult, had previously been repealed in February 2008 and April 2009. Freedom House (2009) notes that Brazil's Telecommunications Code (*Código Brasileiro de Telecomunicações*) fails to comply with international standards of full freedom of expression. The 1962 Code addresses ownership issues of television, radio and other media. The code was formulated in a general manner with the intent of giving the government the legal backing to reprimand information outlets as it saw fit. Issues such as breaching public and family morals, encouraging undisciplined conduct and subverting the public order allowed the military to reprimand, with the force of law, behaviour that it did not deem fit.

Journalists and members of the media investigating corruption within Brazil's public sector are periodically targeted for violent physical attacks (see Box 1.5). In 2009, Brazil ranked 13th on the Committee to Protect Journalists' Impunity Index, an index of countries in which journalists are killed regularly and governments fail to solve the crimes. In comparison, Russia is ranked 8th (with 0.127 unsolved journalist murders per 1 million inhabitants) and Mexico 9th (0.085 unsolved journalist murders per 1 million inhabitants).[57] While traditional media workers are often victims of violence and death threats in Brazil, such attacks have yet to extend significantly to online journalists, bloggers and commentators. Nonetheless, bloggers who report on police corruption and related issues are targeted from time to time, and the overall environment of intimidation contributes to self-censorship among them (Freedom House, 2009).

Box 1.5. **Violence against journalists reporting cases of suspected corruption within the public sector**

In June 2008, 2 individuals on a motorcycle opened fire on the offices of Diário do Amazonas, a daily newspaper published in Manaus, after it ran stories on corruption involving the mayor of the nearby city of Coari.

In May 2007, journalist Luiz Carlos Barbon Filho of the *JC Regional* and *Jornal do Porto* newspapers, who was also a Radio Porto FM contributor, was shot and killed in Porto Ferreira in the state of São Paulo. Barbon was known for his reports on corruption involving people close to the local government, including a 2003 investigation that accused local businessmen and city officials of being responsible for child sex abuse.

Also in 2007, Domingues Junior from Rede TV Rondonia was attacked in his own home, along with his family, by 5 unidentified armed individuals. Junior had denounced a money-for-votes scheme by the state government and had received death threats. In a number of cases over the years, former and incumbent government officials have been guilty of both legal and extra-legal attacks on the media.

In July 2005, 4 unidentified men riding 2 motorcycles shot and killed Jose Candido Amorim Pinto, a journalist in the city of Carpina. The journalist, who was also a city councilman, had been reporting on corrupt practices in the mayor's office on his programme at a local community radio station.

Due to inefficiencies in the justice system, crimes against journalists often go unpunished.

Source: Freedom House (2006; 2008; 2009), *Freedom of the Press: Brazil*, *www.freedomhouse.org*.

Private sector

Ethos Institute for Business and Social Responsibility is a non-governmental organisation created with the mission of mobilising, sensitising and helping companies to manage their businesses in a socially responsible manner. Its membership includes over 900 companies from different market segments and varying in size. These member companies have annual revenues of approximately 30% of Brazil's GDP and employ over 1.2 million people. The Ethos Institute defines the main characteristics of its members as embedding ethical behaviour in their relationships with employees, customers, suppliers, community, shareholders, public power and the environment. The Ethos Institute co-operates closely with the Office of the Comptroller General of the Union in a number of ways. The Ethos Institute is a member of the Council on Public Transparency and Combating Corruption (discussed above), through the Business Pact for Integrity Against Corruption (*Empresa Limpa Pela a Integridade e Contra a Corrupção*) and the Pro-Ethics List (*Empresa Pró-Ética*).

The Business Pact for Integrity Against Corruption has been signed by over 200 private enterprises and business organisations. The pact, launched in June 2006, follows international guidelines, such as the "OECD Guidelines for Multi-national Enterprises" and the "Business Principles" of Transparency International. In signing the pact enterprises and business organisations make a commitment to: *i)* disseminate internally and promote full compliance with national legislation; *ii)* publicise and provide guidance on specific legislation with the company/organisation's activities; *iii)* prohibit bribery of public officials; *iv)* act in a fully transparent and legal manner with respect to campaign financing; *v)* disseminate the pact's principles among its stakeholders;

vi) conduct investigations of misconduct in an open and transparent manner; and *vii)* to check the Registry of Ineligible and Suspended Suppliers.

The Pro-Ethics List is a registry of companies committed to the prevention and fight against corruption, fraud and illicit activities by their employees. Launched in December 2010, the Pro-Ethics List has 4 objectives: *i)* to consolidate and disseminate a list of companies that voluntarily adopt measures to create a culture of integrity and trust in their relations with the public and private sectors; *ii)* to make companies aware of their role in preventing and combating corruption and other unethical practices while positioning themselves to be socially responsible; *iii)* to promote within the private sector measures to enhance ethics and integrity; and *iv)* to reduce the risk of fraud and corruption in relations between the public and private sectors. Companies participating in the list must complete a survey on their ethics and integrity policies for analysis of the List Steering Committee before signing a Commitment to Ethics and Integrity (*Termo de Compromisso com a Ética ea Integridade*).

In addition, the Office of the Comptroller General of the Union maintains the Registry of Ineligible or Suspended Companies/Individuals which is available to the public online. The registry is a single database with constantly updated information provided by federal public organisations on suppliers punished for irregularities in tenders or public contracts. Created in 2008, the registry consolidates and disseminates information on sanctioned contractors and suppliers from the various management systems of individual federal public organisations into a single, continuously updated database. Using the National Registry of Ineligible and Suspended Companies/ Individuals, public officials and citizens can search for suppliers, online, by name, National Register of Legal Persons (*Cadastro Nacional Pessoa Jurídica*) or National Registry of Persons (*Cadastro de Pessoas Físicas*) numbers, or type of sanction. There are currently 1 343 sanctioned suppliers in the registry: 263 ineligible and 1 080 suspended. In addition to information from federal public organisations the list also includes data from eight Brazilian states that have voluntarily provided this information to the Office of the Comptroller General of the Union.[58] The information remains the sole responsibility of the persons who supplied the information. As such, a disclaimer is placed on the information noting that the Office of the Comptroller General of the Union is not liable for the accuracy or authenticity of information or for any direct or indirect damages resulting from them caused to third parties.

Civil society

There are a number of examples of the vitality of Brazilian civil society in the country's recent history. The *Movimento Direitas Já* (Direct Elections Now Movement) ultimately led to the drafting of a new Federal Constitution in 1988 providing for the election of the President of the Republic through popular vote. The *Movimento Sanitarista* (Sanitary Movement), involving middle-class health professionals started a movement to provide health care to underserved groups and regions in the 1970s and 1980s, influenced the redesign of Brazil's health system to provide universal access to publicly funded health care and a decentralisation of authority over health care to the states and municipalities. The *Movimento dos Caras Pintadas* (Painted Faces Movement) promoted the impeachment of President Collor de Mello in 1992.

Since the 1990s, civil society organisations have been growing rapidly in Brazil and associations, foundations and civil society organisations have become more organised. Most of them are small organisations created without many resources by and among

small communities under the new freedom of association established by the 1988 Federal Constitution. A 2004 Brazilian Institute of Geography and Statistics survey of private foundations and not-for-profit associations noted that only 16% of those registered in 2002 had been active before 1980; more than half were established in the 1990s. Civil society organisations have also sought to distinguish themselves by associating their activities within a broader framework of social transformation and advocacy. The Brazilian Association of Non-Governmental Organisations (*Associação Brasileira de Organizações Não Governamentais*) was established in 1991 with a mission to support: *i)* the creation of a legal framework acknowledging civil society organisations; *ii)* the democratisation and opening of the relation between government and civil society; and *iii)* the political and financial sustainability of civil society organisations in a context of criminalisation and crisis of legitimacy of those committed to the enforcement of the rights and with the radicalisation of democracy. The Brazilian Association of Non-Governmental Organisations comprises of 300 member organisations throughout Brazil.

The 1988 Federal Constitution establishes a number of channels for civil society to directly influence public policies. These include the so-called "popular initiative" (*iniciativa popular*) as a mechanism including direct citizen participation through referendum, plebiscite and citizen initiative to start legislation.[59] Through December 2010 only 1 plebiscite and 1 referendum had been held. The plebiscite, held in 1993, focused on the form and system of government. The referendum, held in 2005, was in relation to the Disarmament Statute (defined on Federal Law no. 10 826/2003). In order to be considered by the legislature, popular legislative initiatives must be supported by a number of signatures amounting to at least 1% of the national electoral census, comprising a minimum of 0.3% of the registered voters in at least 5 different states. Until June 2010, 5 citizen initiatives were presented at the National Congress, 4 of them have been approved and 1 is still being evaluated by the National Congress (see Table 1.14).

Two of the popular legislative initiatives presented to date to the National Congress relate to issues of integrity are Bill no. 1 517/1999, relating to the prohibition and punishment for attempting to buy votes; and Bill no. 518/2009, relating to the so-called *Ficha Limpa* (or Clean Criminal Record) – that is, the ineligibility of candidates that have engaged in corrupt acts and other criminal activities.

Table 1.14. **Citizens' initiatives to start legislation**

Bill	Topic and Initiative	Resulting legislation
2 710/1992	The bill was initiated by a quasi-political organisation entitled Movement for Popular Housing (*Movimento Popular de Moradia*). The legislation created the Popular Housing Fund and the National Council on Public Housing (*Conselho Nacional de Moradia Popular*).	Federal Law no. 11 124/2005
4 146/1993	Initiated by a notorious Brazilian writer whose daughter was murdered in Rio de Janeiro, Gloria Perez led a movement that supported murder to be considered a heinous crime.	Federal Law no. 8 930/1994
1 517/1999	Led by the National Conference of Brazilian Bishops (*Conferência Nacional dos Bispos do Brasil*) to punish politicians that try to buy electoral votes.	Federal Law no. 9 840/1999
7 053/2006	Originally initiated by a movement in Rio de Janeiro called "Gabriela I am for Peace" (*Gabriela Sou da Paz*), the bill suggested that stray bullets should be considered heinous crime.	In plenary
518/2009	The most recent bill, known as "Clean List" (*Ficha Limpa*) sets pre-requisites for candidates that seek for a legislative post, by rendering ineligible those that have been convicted in second instance from seeking public office.	Complimentary Law no. 135/2010

Bill no. 1 517/1999 sought to address vote buying or "electoral corruption" as one of the most serious disruptions to Brazilian democracy. The proposal stemmed from a campaign in 1996 entitled "Fraternity and Politics" by the National Conference of Brazilian Bishops (*Conferência Nacional dos Bispos do Brasil*). The popular initiative was published in April 1998 by a working group led by a former Attorney General with the involvement of 32 non-governmental organisations. In August 1999, representatives of more than 30 organisations submitted to the National Congress a popular initiative supported by over 1 million signatures, including the support of mass media and of various key organisations (*e.g.* trade unions and the Brazilian Bar Association). The bill was supported by all parties represented in the Chamber of Deputies and subsequently processed as a regular legislative initiative. The project received a unanimous support in the Constitutional Commission and was finally approved in September 1999. Since its approval, Federal Law no. 9 840/1999 has been applied in the elections held in 2000, 2002, 2004, 2006 and 2008. In 2008, 623 public officials were found guilty of vote buying, including 4 governors or vice-governors, 6 federal senators and 18 federal deputies (MCCE, n.d.).

Bill no. 518/2009 aimed to preventing candidates who have convicted of any one of a range of crimes from running for public office. Referred to as *Fischa Limpa* or the Clean Criminal Record, relevant crimes included racism, homicide, rape, drug trafficking, misuse of public funds as well as electoral fraud. The popular initiative gathered the support of over 1.9 million citizens and entered the National Congress in September 2009. Complementary Law no. 135 was sanctioned by President Lula in June 2010. Blacklisted candidates can appeal the decision before a competent court. The interim suspension of the decision can also be requested. The blacklisting period contemplated in the law is eight years. In June 2010, the Supreme Electoral Court resolved a consultation formulated by some legislators by declaring that Complementary Law no. 135/2010 will be applicable for the 2010 national elections. Barely one month after coming into force, this complementary law already led to the suspension of various senators, majors and federal and state deputies.

Civil society has also been a direct ally to government efforts to crack down on corruption within the public administration. The federal government has deliberately sought to mobilise civil society to complement the activities of internal and external control and audit. The Transparency Portal, public organisations' transparency pages and

the Charter of Citizens' Services are three examples through which policies for proactive transparency equip citizens with the necessary information to oversee administrative decision making by the public administration. There are no studies on the effect of these policy instruments on the general public nor the media.

In contrast, empirical and anecdotal evidence does exist of the role of civil society acting upon government actions to disseminate information on corruption in government. For example, public prosecutors in the state of Londrina, sought publicity and public protest to counter the intense political pressure and witness intimidations that made indictments difficult to attain. Public prosecutors reached out to community organisations to raise awareness of administrative corruption and political efforts to obstruct accountability. This was complemented by moves to establish telephone and Internet-based channels through which citizens could submit claims against public officials. Once approached, leading non-governmental organisations mobilised 80 community-based organisations in an alliance which attracted media attention. Enhanced public interest allowed state public prosecutors to overcome political pressure (Grimes, 2008).

A number of empirical studies demonstrate the impact of government random audits of small and medium-sized municipalities on the electoral performance of incumbent parties and mayors. Drawing upon 669 municipal reports of random reports selected across the first 13 lottery tranches, Ferraz and Finan (2007) found that an increase in reported corruption of one standard deviation from the sample median reduces the likelihood of an incumbent's re-election by 20%. In addition, they found that the effect of the Office of the Comptroller General random audits was more pronounced in areas where local radio is available, reducing the probability of re-election by 40%, and increasing the likelihood of re-election of non-corrupt incumbent politicians. Ferraz et al. (2009) go further and highlight the impact of corruption on education outcomes, with corruption reducing education outcomes, measured by results of standardised tests, by 0.35 standard deviations. In a similar regard, in examining the impact of the random audit reports from 784 municipalities randomly selected from the first 15 lottery tranches Brollo (2009) finds that the release of audit reports, on average, has a detrimental impact on corrupt mayors' probability of re-election. However, the study found that voters do not punish mayors who are affiliated with the political party of the President of the Republic and that the impact of the release of audit reports on the electoral outcomes completely disappears after eight months.

Notes

1. Unlike most federations, Brazil's 1988 Federal Constitution treats states and municipalities as equal members of the federation. The structure of the states and the municipalities is determined in their respective state constitutions and municipal organic laws and through enactment of state laws and municipal ordinances. Even the Federal District is structured on the basis of its own organic law. States, the Federal District and municipalities must respect the principles and authorities set forth in the Federal Constitution. Governors, deputy-governors and state deputies are elected by direct vote, to four-year terms. The state legislatures are unicameral bodies in which parliamentarians convene for the state's legislative assembly. The municipalities elect their respective mayors and deputy mayors by direct ballot; elections for town/city council members are held every four years. The Federal District elects its governor, deputy governor and the deputies, the latter being members of the local legislative body. All these officials serve four-year terms.

2. These are the four types of organisations of the indirect federal public administration listed in Federal Decree-Law no. 200/1967, Article 3.

3. See Federal Law no. 9 649/1998 and Federal Decree no. 2 487/1998.

4. This is done, for example, by the executive agency providing the supervising federal ministry with performance reports at least every six months. Associated with this status, which is granted, suspended or revoked through a presidential decree, are a number of benefits including autonomy in fixing the amount of *per diem* for their officials and increasing thresholds for different procurement methods.

5. Data are missing beyond 2003. De Moraes et al. (2008) conclude that in late 2008, the proportion of federal employees among public sector employees was approximately 15%.

6. This is an estimate due to the unavailability of some data after 2005.

7. This average is for 2005. Averages for subsequent years cannot yet be calculated but there is evidence that the average has not changed significantly.

8. Data for 2005 indicate approximately 11% for 2005. Data for 2008 are estimated between 11% and 12%.

9. In Brazil, retirees and pensioners are often counted as part of the public sector workforce. They are not included in the data here, which, according to the Brazilian Institute of Geography and Statistics, follow international methodologies and the classification of the System of National Accounts. The data are thus comparable with those of OECD countries.

10. The largest group – approximately 81 000 federal public officials – covers the majority of government employment in 3 ministries: the Federal Ministries of Social Security, Health and Labour and Employment.

11. There is an exception in relation to the organisations within the Office of the President of the Republic in which officials do not need to be a supervisory and management official.

12. There is growing literature concerning Brazil's Office of the Comptroller General of the Union. It generally focuses on a specific action/programme (e.g. Ferraz and Finan, 2008) or on a particular function/unit within the organisation (e.g. Olivieri, 2008; Balbe, 2010). This has been driven by a combination of public availability of information produced by the Office of the Comptroller General of the Union and a number of the Office of the Comptroller General of the Union officials pursuing post-graduate studies and focusing their theses on their employers.

13. Its current composition includes a former President of the Brazilian Supreme Court, a former President of Brazil's National Bar Association, a former advisor to the National Conference of Brazilian Bishops and a former State Secretary for Justice, Citizenship and Human Rights.

14. Of these 26 units, 10 are part of the indirect administration, including a number of port authorities.

15. The Federal Public Security Department (*Departamento Federal de Segurana Publica*) was created in 1944. The name federal did not mean that it had a nationwide jurisdiction but that its primary focus was crime in the Federal District. The Federal Public Security Department did have nationwide responsibilities, especially in the fight against drug trafficking and counterfeiting. In 1946 the Constitution adopted a form of federalism with strong bias towards the states and clashed with the idea of a national police body. The 1946 Constitution did not include the Federal Public Security Department as a federal police body and police activities remained under the control of state governors. When the capital was moved from Rio de Janerio to Brasília in 1960 the Federal Public Security Department practically disappeared as most of its staff opted to remain in Rio. After the 1964 coup, the military regime granted the Federal Public Security Department national jurisdiction (Federal Law no. 4483/1964), although it did not imply an increase in personnel or an improved structure. This date has been adopted by the Department of the Federal Police as its founding date. In 1967, in the midst of the regime's reforms to the state security apparatus, the Federal Public Security Department was renamed the Department of the Federal Police, as it is still known. During the military regime the Department of Federal Police operated little except for its work in censoring newspapers and art. For political reasons the regime relied more on the National Information Service at the federal level and Departments of Political and Social Order linked to the civil police forces in the federal states (Arantes, 2011).

16. The Brazilian police forces are structured into a number of segments reflecting the federal structure of government. Police forces exist at both the federal and state levels, with different forces operating at each level. At the federal level, the Federal Police has 27 regional superintendents, 54 federal police delegations, 12 outposts, 2 maritime bases and 2 inland waterways bases. It also heads the Brazilian immigration authority, the National Arms Control System and represents the police at Interpol. The Department of Federal Highway Police within the Federal Ministry of Justice is responsible for policing federal highways and assisting in specific operations. In particular, the Department of Federal Highway Police is tasked with environmental defence, inspecting cargo loads and border patrol. The Department of Federal Railway Police parallels the Department of Federal Highway Police. However, the massive privatisation of Brazil's rail system in the 1990s, the department is in shutdown process.

At the state level, two police forces exist: the State Civil Police and the State Military Police. The State Civil Police (also known as Judicial Police) is responsible for investigations involving crimes against individuals and private property. It is responsible for vehicle registration and the issuance of national identification cards. The State Military Police is responsible for crime prevention and is a uniformed street patrol. The military police also perform investigations of their own members' criminal misdeeds, in cases subject both to the civilian and military criminal courts. Both the State Civil and State Military Police are under the State Secretary for Public Safety. The State Military Police are not to be confused with the Army, Navy and Air Force police units. The latter are internal security units of each branch of Brazil's Armed Forces. At the municipal level, Municipal Guard Forces exist in a few cities (e.g. Rio de Janeiro). Their main duties are traffic violations and the physical security of municipal buildings though, in some cases, it helps on street patrolling.

17. See 1988 Federal Constitution, Article 129.

18. These other authorities are as follows:

- Office of the Labour Public Prosecutor (*Ministério Público do Trabalho*), competent to handle labour matters, ensuring compliance with labour legislation and operating in some cases as a mediator between employers and employees.
- Office of the Military Public Prosecutor (*Ministério Público Militar*), operating in the investigation and prosecution of military crimes as well as any infractions against military assets.
- Office of the Public Prosecutor for the Federal District and Territories (*Ministério Público do Distrito Federal e Territórios*), competent to intervene in the Federal District in the same cases that are handled by state prosecutors' offices elsewhere in the country.
- Office of the Electoral Public Prosecutor (*Ministerio Público Eleitoral*), which does not have an organisational structure of its own. The Office of the Federal Public Prosecutor and the offices of the state prosecutor operate as electoral prosecuting authorities when they monitor the legality of electoral processes and prosecute authors of electoral crimes.
- The prosecutor general has the power to appoint the heads of the other authorities, with the exception of the Electoral Public Prosecutors' Office, which is again headed by the prosecutor general.

It should be noted that the Office of the Public Prosecutors located within the Federal Court of Accounts does not belong to the Office of the Public Prosecutor of the Union. These attorneys belong to the Federal Court of Accounts and their mission is to control the legality of the procedures carried out within that institution.

19. See 1988 Federal Constitution, Article 109.

20. *Procuradores da República* or *Procuradores Regionais da República* (on appeal before the regional federal courts) at the federal level, and *Promotores de Justiça* and *Procuradores de Justiça* at the state level. At the states level, public prosecutors are regulated by Federal Law no. 8 635/1993.

21. The procedure is very similar for the appointment of state general prosecutors by the respective governors.

22. See 1988 Federal Constitution, Article 129.

23. See 1988 Federal Constitution, Article 144.

24. In 2009, the following organisations participated in National Strategy: the Office of the Attorney General; the Brazilian Intelligence Agency; the Brazilian Telecommunications Agency; the Federal Judge Association; the National Association of the Federal Prosecutors; the Association of Magistrates of the State of Rio de Janeiro; the National Association of State Attorneys; the Central Bank of Brazil; the Bank of Brazil; the Chamber of Deputies; the Republic Presidency's Civil House; the Federal Savings Bank; the Securities and Exchange Commission of Brazil; the Federal Justice Council; the Council for Financial Activities Control; the National Council of Justice; the National Council of Public Prosecution; the National Council of the Attorneys-General of the Federal and State Public Prosecution; the National Council of State Chief of Police; the Office of the Comptroller General of the Union; the Department of Federal Police; the Department of Assets Recovery and International Legal Co-operation; the Republic Presidency's Institutional Security Cabinet; the National Social Security Office; the Federal Ministry of Defense; the Federal Ministry of Finance; the Federal Ministry of Justice; the Federal Ministry of Social Security; the Federal Ministry of Foreign Affairs; the Federal Ministry of Labour; the Ministry of Planning, Budget and Management; the Office of the Public Prosecutor; the National Finance Attorney General; the Secretariat of the Federal Revenue; the Legislative Issues Secretariat; the Economic Rights Secretariat; Custommer Protection Service; the Secretariat for the Reform of the Judiciary; the National Treasury Secretariat; the National Anti-Drugs Secretariat; the National Secretariat of Justice; the National Public Security Secretariat; the Federal Budget Secretariat; the Federal Senate; Superintendency for Private Insurance; the Superior Court of Justice; the Federal Supreme Court; the Federal Court of Audit; the Brazilian Public Prosecutor Schools Board of Directors; the National Collegiate of Correctors of Justice; the Brazilian Federation of Banks Association; the Government of the State of Bahia; the National Group for the Combat Against Organised Criminal Groups; the State Public Prosecution of Bahia; the State Public Prosecution of São Paulo; the State Public Prosecution of Rio de Janeiro; the Bahia Secretariat of Public Security; the Bahia Court of Justice; and the Electoral Superior Court.

25. Civil society organisations are also represented in the National Strategy including: the Association of Brazilian Judges (*Associação dos Juízes Federais*); the National Association of Federal Prosecutors (*Associação Nacional de Procuradores da República*), the School of Judicial Inspectors General (*Colégio dos Corregedores Gerais de Justiça*). There are also a number of special observers to the National Strategy meetings including: the Association of the Rio de Janeiro Office of the State Public Prosecutor (*Associação do Ministério Público do Estado do Rio de Janeiro*); the Board of Directors of the Schools of the Office of the Public Prosecutor (*Colégio de Diretores de Escolas dos Ministérios Públicos do Brasil*); the Brazilian Federation of Banks (*Federação Brasileira de Bancos*); the Advanced School Foundation of the Rio de Janeiro Office of the State Public Prosecutor (*Fundação Escola Superior do Ministério Público do Estado do Rio de Janeiro*); and the National Anti-Organised Crime Group (*Grupo Nacional de Combate à Organizações Criminosas*).

26. See 1988 Federal Constitution, Articles 51 and 52.

27. See 1988 Federal Constitution, Article 52.III. The 1988 Federal Constitution states that it is a private prerogative of the Federal Senate to approve presidential appointments for the upper courts (Federal Supreme Court, Military Superior Court, Labor Superior Court and Justice Superior Court); one-third of the ministers of the Federal Court of Accounts; the president and board of directors of the Central Bank;

the General Attorney of the Union; ambassadors; among others. Regulatory agencies have their directors, presidents and counselors nominations considered in the Senate. This also applies to the Brazilian Intelligence Agency (*Agência Brasileira de Inteligência*). Between 1989 and 2003, there were 882 nomination processes initiated, or approximately 59 per year, with 97% of the nominations confirmed by the Federal Senate. The average length of approval time was 36 days for federal ministers and judges of Federal Superior Courts; 76 days for ambassadors/diplomats; 17 days for presidents and directors of the Central Bank; 19 days for judges of Federal Supreme Court; and 15 days for public prosecutors (Lemos and Llanos, 2006).

28. See 1988 Federal Constitution, Article 58.

29. See 1988 Federal Constitution, Article 58.

30. See 1988 Federal Constitution, Article 58.

31. See *www9.senado.gov.br/portal/page/portal/orcamento_senado/SigaBrasil*.

32. See 1988 Federal Constitution, Article 166.

33. See 1988 Federal Constitution, Article 58§3.

34. See Congresso em Foco, "*Exclusivo: Todos os Parlamentares Processados no STF*," *http://congressoemfoco.uol.com.br/noticia.asp?cod_publicacao=33288&cod_canal=21*.

35. See 1988 Federal Constitution, Article 71.

36. In 1992, however, the Federal Court of Accounts issued a negative opinion on the 1991 accounts presented by the Collor de Mello administration.

37. See 1988 Federal Constitution, Article 71.IV.

38. For officials see *http://portal2.tcu.gov.br/portal/page/portal/TCU/comunidades/responsabilizacao/inabilitados*; and for suppliers see *portal2.tcu.gov.br/portal/page/portal/TCU/comunidades/responsabilizacao/inidoneos.*

39. See *http://portal2.tcu.gov.br/portal/page/portal/TCU/comunidades/responsabilizacao/inabilitados*.

40. An alternative typology is to group supreme audit institutions into Napoleonic, Westminster and boards systems (Stapenhurst and Titsworth, 2006). In a Napoleonic model, the supreme audit institution is an integral part of the judiciary, making judgments on government compliance with laws and regulations as well as ensuring that public funds are well spent (e.g. France, Italy, Portugal and Spain). In the Westminster model, the Office of the Auditor General is an independent body that reports to parliament (e.g. Australia, Canada and the United Kingdom). The board system is similar to the Westminster model in that it is independent of the executive and helps parliament perform oversight (e.g. Japan and Korea). Under this model, Brazil is somewhat between the Napoleonic model and the Westminster model.

41. The Tribunal of Accounts can be divided into First Chamber and Second Chamber, through the deliberations of an absolute majority of its permanent members. Each chamber is made up of four ministers who will fill the posts for a period of two years. The President of the Office will not participate in the composition of the chambers. The First Chamber will be presided over by the Vice President of the Office and the Second Chamber by the most senior minister that is part of it. With the approval of

the Office, a change or voluntary shift of ministers from one chamber to another is permitted. See Federal Law no. 8 433/1992, Articles 15-17.

42. The same change applied to the courts of accounts at the state level. In some states, the governors (rather than the state legislative assembly) were able to continue to appoint replacements at will; in other cases, they appointed auditors or public prosecutors. This was possible because the openings depended on the retirement or death of board members and the rule was ambiguous on the sequencing for the fulfilling of vacancies. More significantly, there were no senior auditors in 11 states. This was because there was no legal statute for the creation of the position of senior auditor career track or because the position was vacant. In many cases, the governors actively maintained the *status quo* so that they could continue the practice of filling the two positions as they pleased (Melo et al., 2009).

43. See *http://portal2.tcu.gov.br/portal/page/portal/TCU/ouvidoria/sobre_ouvidoria*.

44. See Federal Court of Accounts Resolution no. 193/2006. See also Branco (2007).

45. In parallel to the federal court system, the Federal Constitution also mentions the following judicial bodies:

- labour courts and judges, with jurisdiction over individual and collective disputes between workers and employers;
- electoral courts and judges, with jurisdiction over electoral matters, such as the validity of electoral lists, the eligibility of individuals to run for office, the regularity of electoral campaigns and voting;
- military courts and judges, with jurisdiction to prosecute and try military crimes defined by law as well as to examine appeals against military decisions (e.g. promotions, disciplinary measures); and
- state courts and judges, which have jurisdiction over all other cases in the terms defined in the constitution of each of the 26 states.

46. See 1988 Federal Constitution, Article 103a.

47. See 1988 Federal Constitution, Article 103b.

48. In this context, the underlying institutional framework offers ample opportunities for judicial activism. A paradigmatic example of this phenomenon is an injunction adopted by a federal judge in Mato Grosso State requiring all United States nationals to provide their fingerprints upon landing in Brazilian territory as of January 2004. The judge invoked the reciprocity principle presiding international relations, but the decision gave rise to a wide controversy over the scope of the judiciary's powers. Similar examples abound in other areas, including the privatisation of public enterprises during the 1990s, which encountered a number of obstacles in the form of judicial injunctions, and the 1999 fiscal reforms, which were struck down as unconstitutional by the Federal Supreme Court despite the fact that they were a cornerstone of a USD 45 billion rescue package negotiated with the International Montery Fund (Santiso, 2003).

49. See National Council of Justice Resolution no. 7/2005.

50. See National Council of Justice Resolution no. 67/2009.

51. See *Presidente do Supremo Apresenta os Indicadores Estatísticos do Poder Judiciário e Sugere Mudança na Atuaçao da Justiça* [President of the Supreme

Presents Statistical Indicators of the Judiciary and Suggests Changes in the Judiciary,], 12 May 2005, *www.infojus.gov.br/portal/noticiaver.asp.*

52. See 1988 Federal Constitution, Articles 5 and 220.

53. There are nine representatives from the federal government (from the Federal Ministry of Science and Technology; Federal Ministry of Communication; Federal Ministry of Defence; Presidential Cabinet; Federal Ministry of Development, Industry and Foreign Trade; Federal Ministry of Planning, Budget and Management; National Telecommunications Agency; National Council for Scientific and Technological Development; National Council of State Secretariats for Science, Technology and Information Issues); four representatives from the private sector, four representatives from non-governmental organisations, three representatives from the scientific and technological community, and one Internet expert (see *www.cgi.br/english/about/definition.htm*).

54. See "IVC aponta que circulação dos vinte maiores jornais do Brasil caiu 6.9% em 2009" [IVC indicates that movement of the 20 largest newspapers in Brazil fell 6.9% in 2009], *Portal da Imprensa*, 3 February 2010, *http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/02/03/imprensa33560.shtml*.

55. See *www.internetworldstats.com/top20.htm.*

56. "Concessões dadas a rádios triplicam em ano eleitoral" [Concessions Given to Radios Triple in Election Year], FOLHA.com, 16 August, 2010, *www1.folha.uol.com.br/poder/783547-concessoes-dadas-a-radios-triplicam-em-ano-eleitoral.shtml&site=emcimadahora.*

57. See Committee to Project Journalists, *www.cpj.org.*

58. These states are Bahia, Espírito Santo, Goiás, Minas Gerais, Pernambuco, Sergipe, São Paulo and Tocantins.

59. See 1988 Federal Constitution, Article XIV, items I, II and III.

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Chapter 2

Promoting transparency and citizen engagement

Promoting transparency and citizen engagement is considered essential for enhancing accountability and external oversight of public organisations. This chapter examines the progress by the federal government of Brazil over the past decade to increase transparency and mainstream citizen participation in the public administration. These actions have taken place in the absence of a comprehensive freedom of information law, although a draft law is currently under discussion in the National Congress. The proposals for action focus on: *i)* strengthening preparation for the eventual implementation of a freedom of information law, *ii)* enhancing the scope and accessibility of information made available through the government's various transparency portals; *iii)* assessing the effectiveness of the government's charter of citizens' services; and *iv)* evaluating the effectiveness of the ombudsman system of the federal government.

Introduction

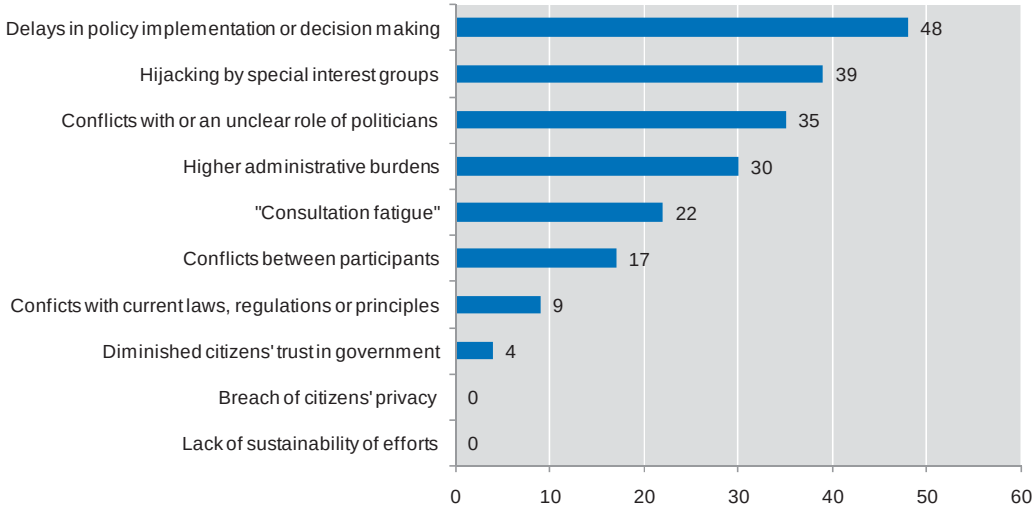
Promoting transparency and citizen engagement is considered essential for enhancing accountability and external oversight of public organisations (see *e.g.* OECD 2001; 2003; 2005; 2009a). The role of transparency and citizen engagement in fighting corruption is also recognised in international conventions against corruption.[1] Transparency provides citizens with the information they need to oversee and evaluate government decision making and public policies. Citizen engagement can also create a shared responsibility for overseeing service delivery and a shared role in preventing misconduct. Together, transparency and citizen engagement can facilitate: *i)* better policy outcomes at lower costs; *ii)* higher compliance with decisions reached; and *iii)* equity in access to policy making and service delivery. It can also help to improve policy performance and fiscal legitimacy by helping governments to: *i)* better understand and respond to citizens' evolving needs; *ii)* leverage knowledge and resources from beyond the public administration; and *iii)* develop innovative solutions to policy problems and their implementation.

Transparency, while a necessary condition, is insufficient to guarantee effective citizen engagement. Increasingly, OECD member countries are adopting proactive transparency measures to ensure that citizens get immediate access to public information and avoid the cost of engaging in administrative procedures to access the information. Governments must invest in lowering barriers to engage the "willing but unable" and make engagement attractive to the "able but unwilling". Risks are also inherent in increasing transparency and citizen engagement; like any actions undertaken by the government, careful risk management is required. Possible risks include delays in public decision making, capture of processes by special interests, consultation fatigue and conflicts among participants (see Figure 2.1). These risks can inadvertently undermine public governance and trust in government.

This chapter describes the main trends related to promoting transparency and citizen engagement within Brazil's federal public administration. The 1988 Federal Constitution establishes a basis for freedom of information and citizen oversight by enshrining "publicity" of administrative actions as one of its five core principles.[2] It also provides for direct citizen participation in the oversight of public policies in the areas of health, social security and welfare. Brazil has, however, yet to establish a comprehensive freedom of information law, as is present in all OECD member countries. Despite the absence of such a law, the federal government has put in place various policies to foster proactive transparency and enhance citizen engagement. This began with a push for budget transparency in 2000 and has since been expanded to cover administrative processes and decision making. In parallel, the federal government of Brazil has established numerous channels, such as participatory councils and conferences at all levels of government, allowing citizens to actively participate in direct social control.

Figure 2.1. **Risks of citizen engagement facing governments in OECD member countries, 2009**

% of responding OECD member countries[1] ranking option as "important" or "very important"



Note: 1. There were 24 responding countries: Australia, Austria, Canada, Chile, the Czech Republic, Finland, Germany, Hungary, Ireland, Italy, Japan, Korea, Luxembourg, the Netherlands, Norway, Poland, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

Source: OECD (2009), *Focus on Citizens: Public Engagement for Better Policy and Services*, OECD, Paris, doi: 10.1787/9789264048874-en.

The drive for transparency and citizen engagement in Brazil has been led by the Office of the Comptroller General of the Union (*Controladoria-Geral da União*), the Federal Ministry of Planning, Budget and Management (*Ministério do Planejamento, Orçamento e Gestão*) and the General Secretariat of the Office of the President of the Republic (*Secretaria-Geral da Presidência da Repbública*).

- The Office of the Comptroller General of the Union, through the Secretariat for Corruption Prevention and Strategic Information (*Secretaria de Prevenção da Corrupção e Informações Estratégicas*), makes information on federal government expenditure publicly available through the Transparency Portal, and works to raise public awareness on the importance and potential of direct social control. In addition, the Office of the Comptroller General of the Union is the location of the Office of the Ombudsman General of the Union (*Ouvidoria-Geral da União*). This office oversees the functioning of organisational ombudsman units within federal public administration organisations. Finally, the Secretariat for Federal Internal Control (*Secretaria Federal de Controle Interno*) is responsible for monitoring the implementation of the newly created Charters of Citizens' Services.
- The Federal Ministry of Planning, Budget and Management, through the Secretariat of Management (*Secretaria de Gestão*), sets policies and guidelines with respect to Charters of Citizens' Services. These charters, oriented towards service users, aim to promote accountability. The ministry does not have a formal role for monitoring the implementation of the charters; this belongs to the Office

of the Comptroller General of the Union. In addition, the Secretariat for Logistics and Information Technology (*Secretaria de Logística e Tecnologia da Informação*) formulates policies and promotes transparency and citizen engagement through the management of common back-office systems for the federal public administration that support document and archive management.

- The Office of the President of the Republic, through the Secretariat of National Social Interaction (*Secretaria Nacional de Articulação Social*), promotes, co-ordinates and monitors citizen engagement policies within the federal public administration. It does not establish standards and manuals to guide the operations of the councils and the conferences at the various levels of government.

In addition to these secretariats, the Council on Public Transparency and Combating Corruption (*Conselho de Transparência Pública e Combate à Corrupção*) serves as a consultative body to debate and recommend measures for the promotion of transparency, internal control of public financial resources and prevention of corruption within the federal public administration. This includes: *i)* contributing to the formulation of transparency policies, guidelines and projects; *ii)* suggesting improvements and integration of internal procedures; *iii)* carrying out studies and establishing strategies to substantiate legislative and administrative proposals for the prevention of corruption; and *iv)* mobilising organised civil society to engage in direct social control. The council is comprised of 20 members, half from government and half from civil society.

Finally, the experience of Brazil's federal public administration in promoting transparency and citizen engagement must be considered in light of the country's dynamic media and civil society. The 1988 Federal Constitution provides for freedom of speech and freedom of the press. The media presents an array of opinions on social and political issues, as well as criticism of the government and its policies. There are also a number of examples of the vitality of Brazil's citizens and their voice in shaping the country's process of democratisation during the 1980s and major political developments during the 1990s (see also Chapter 1).

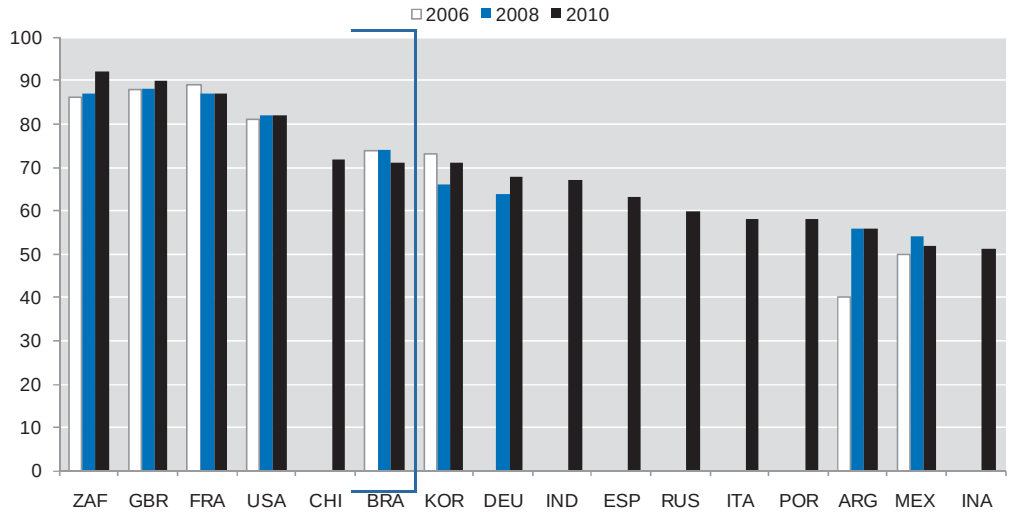
The remainder of this chapter is structured in three sections. The first section examines the federal government's push for transparency in the management of public finances since 2000. It includes a discussion on the Transparency Portal and other "transparency pages" of the federal public administration that provide free real-time information on the execution of government policies and programmes. The second section examines recent actions to increase accountability and citizen orientation of public service delivery. It includes a discussion on the increase in the number of organisational ombudsman units since 2003, the creation of an obligation for all federal public organisations established a Charter of Citizens' Services in 2009 and actions to prepare for the eventual implementation of a freedom of information law. The third section discusses efforts to enhance transparency and create a level playing field for different voices in the policy process. It includes a discussion of the role of participatory councils and conferences in overseeing federal public policies and efforts to regulate lobbying.

Transparency in the management of public finances

The budget is the key policy document of any democratic government. It sets the country's economic parameters for the coming years, reconciles competing priorities and supports the implementation and evaluation of the government's policies (OECD, 2002).[3]

Brazil has long been recognised for the strength of its budget transparency in comparison to both OECD member countries and emerging economies, as well as its efforts to improve the management of public finances (see *e.g.* IMF, 2001; Blöndal et al., 2003; IBP, 2006, 2008, 2010; Liernert and Fainboim, 2010; see also Figure 2.2). The 2000 Law on Fiscal Responsibility establishes the public availability of key budget documents throughout the budget cycle as a means for oversight and direct social control. This has been supported, since 2004, by the use of new technologies to provide real-time information on budget execution. While transparency in public procurement is closely linked to budget transparency, and especially budget execution, this is discussed separately in Chapter 5.

Figure 2.2. **Budget transparency in Brazil and select countries**



Notes:

Brazil: a slightly lower score for 2010 in comparison to previous years was attributed to a less comprehensive year-end report, audit report and executive's budget proposal.

Chile, India, Indonesia, Italy, Portugal, Russian Federation and Spain: data available only from 2010.

Source: Adapted from IBP (2006; 2008; 2010), *Open Budget Survey*, *www.internationalbudget.org/what-we-do/open-budget-survey.*

Transparency, control and oversight of public finances are embodied in Brazil's 2000 Law on Fiscal Responsibility

The Law on Fiscal Responsibility establishes guidelines on transparency, control and oversight of public finances for all three levels of government. Brazil's Law on Fiscal Responsibility is similar in many respects to fiscal responsibility legislation that exists in a number of OECD member countries. For example, Australia's 1998 Charter of Budget Honesty Act, New Zealand's 1994 Fiscal Responsibility Act and the United Kingdom's 1998 Code for Fiscal Stability. As part of its commitment to transparency, Brazil's Law on Fiscal Responsibility includes an obligation for the federal government to make publicly available, including electronically, various core budget-related documents. These include: *i)* the four-year Pluri-Annual Plan (*Plano Plurianual*); *ii)* the three-year Budget Guidelines Law (*Lei de Diretrices Orçamentárias*); *iii)* the Draft Annual Budget Law

(*Projeto de Lei Orçamentária Anual*); *iv)* the Annual Budget Law (*Lei Orçamentária Anual*); *v)* in-year budget execution reports; and *vi)* year-end government accounts and their prior opinion before being externally audited by the Federal Court of Accounts (*Tribunal de Contas da União*).

The Pluri-Annual Plan sets the government's priorities over the medium-term, together with explicit targets and indicative budgetary appropriations at the programme level. It is released during the first year of every administration. The Budget Guidelines Law is an annual law establishing directives for the formulation and execution of the federal budget over a medium term framework of three-years. It must be submitted to the National Congress for examination and approval 4.5 months before the submission of the Draft Annual Budget Law. The Draft Annual Budget Law must in turn be submitted to the National Congress by the President of the Republic before 31 August, allowing 4 months for its review and approval. This document is accompanied by a message from the President of the Republic outlining the main drivers of the budget proposal and the key policy priorities for the budgeted fiscal year. All of these documents are available to the public on the Internet within 15 days after their submission to the National Congress.[4] In addition, the records of discussions of these documents by the National Congress' Planning, Budget and Control Joint Committee (*Comissao Mista de Planos, Orçamentos Públicos e Fiscalizaçao*) are publicly available through the website of the National Congress.[5] Between 2002 and 2009, the Planning, Budget and Control Joint Committee held a total of 66 public hearings.

Extra-budgetary funds and quasi-fiscal activities are not included in the budget, limiting the full extent of budget transparency in Brazil. For example, the Guarantee Fund for Length of Service for Employees (*Fundo de Garantia por Tempo de Serviço*) is not part of the federal budget, and only a residual payment of labour liabilities appears as budget revenue. The fund collects money paid by employers and used as compensation in case of layoffs. It is collected by an official bank, which uses it to finance projects in states and municipalities related to housing, sanitation and infrastructure. The fund's assets include direct contributions and loans made to sub-national governments. Between 2003 and 2006, its assets increased by 21.1% and reached BRL 186.1 billion. The budget does, however, include information on future liabilities such as social security (*e.g.* the National Institute of Social Security, civil and military service) assistance benefits, among others (IBP, 2010).

The federal government publishes comprehensive in-year budget execution reports. Every two months, the Secretariat of the National Treasury (within the Federal Ministry of Finance) and the Secretariat of the Federal Budget (Federal Ministry of Planning, Budget and Management) submit a joint budget execution report to the Planning, Budget and Control Joint Committee. These in-year reports cover expenditure by each administrative unit, but do not include information by programme or action. These reports also compare the realised and budgeted amounts for most expenditure categories.[6] Unaudited end-year financial statements are published on the Secretariat of the National Treasury's website by the end of March each year.[7] The federal balance sheet is prepared by the Office of the Comptroller General of the Union, based on the reports of individual public organisations, and submitted to the National Congress by 15 April following the end of the fiscal year. This balance sheet provides an extensive explanation of the differences between the annual budget law and the actual expenditure at programme level. It also includes descriptions by public organisation and programme, but does not contain systematic data on programme outcomes.

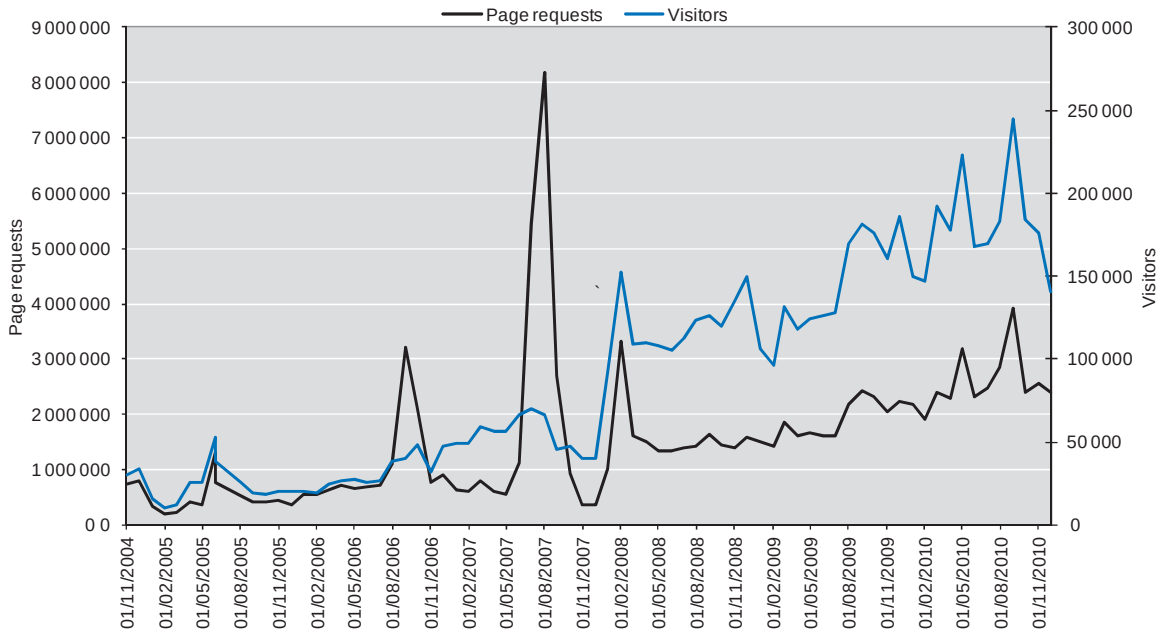
Once received by the National Congress, the federal government's balance sheet is forwarded to the Federal Court of Accounts for examination. All audit reports by the Federal Court of Accounts are published on its website. The National Congress does not make records of hearings of the audited accounts public. As noted in Chapter 1, the ability of the National Congress to support accountability within the federal executive is undermined by its almost non-existent scrutiny, despite adequate time for review, of management reports and external audit reports prepared by all federal public organisations and the Federal Court of Accounts, respectively.

Real-time transparency of budget execution is provided through the Transparency Portal of the Federal Public Administration

The Transparency Portal of the Federal Public Administration (*www.portaldatransparencia.gov.br*) was created in November 2004 to provide free real-time access to information on budget execution, as a basis to support direct monitoring of federal government programmes by citizens. Access to the Transparency Portal is available without registration or password. Data are automatically extracted and published on the portal from existing information systems of the federal public administration, removing the need for any specific actions by federal public organisations to publish information. Since May 2010, revenue and expenditure data available through the Transparency Portal is updated daily. Citizen use of the portal has grown since its launch from approximately 700 000 hits per month to approximately 2.3 million hits per month, with the number of users growing from approximately 10 000 per month to 230 000 per month (see Figure 2.3). The Transparency Portal has received recognition internationally. For example, in 2008 the Transparency Portal was recognised as one of the best practices for transparency and the fight against corruption at the 2nd Conference of State Parties to the United Nations Convention Against Corruption.

In comparison, only a handful of OECD member countries have launched permanent electronic public reporting of government for citizens. For example, the United States makes information on spending and select analysis relating to all federal expenditure publicly available through *www.USAspending.gov*. More recently, online government expenditure reporting and tracking systems have often been used by some OECD member countries to provide detailed and up-to-date information on fiscal stimulus and disaster response expenditure. For example, Australia's Department of Treasury launched a website (*www.economicstimulusplan.gov.au*) in March 2009 to provide transparency in the execution of the Australian Government's Economic Stimulus Plan. In Indonesia, real-time information on the execution of government rehabilitation and reconstruction funds was made available by the Ministry of Finance Special State Treasury Service Office's website. Other OECD member countries provide information on government financial information as part of efforts to provide access to (non-sensitive) government information and data to citizens (*e.g.* Australia's *http://data.australia.gov.au*, the United Kingdom's *http://data.gov.uk* and the United States' *www.data.gov*).[8] These portals allow citizens to scrutinise "unfiltered" (by government) data, and businesses to use previously unpublished information for commercial purposes (OECD, 2010a).

Figure 2.3. **Use of Brazil's Transparency Portal**



Source: Secretariat for Corruption Prevention and Strategic Information, Office of the Comptroller General of the Union.

The Transparency Portal makes available information on: *i)* funds transferred by the federal government to states, municipalities and the Federal District; *ii)* funds transferred directly to citizens (*e.g.* Family Grant Programme); *iii)* funds transferred for the delivery of services using agreements by sub-central governments and not-for-profit organisations (*convênios*); and *iv)* direct spending by the federal government through procurement, administrative contracts and the federal government Payment Cards (*Cartão De Pagamento do Governo Federal*). Table 2.1 presents the search queries that citizens run using the Transparency Portal. Data comes from a variety of government sources, foremost among them the Secretariat of National Treasury's Federal Government Financial Administration System. Details for the Department of Federal Police, the Brazilian Intelligence Agency, the Secretariat of Federal Revenue, and the Brazilian Army, Navy and Air Force – as well as expenditure related to personal and family matters of President of Republic – are presented only at an aggregate level. The Transparency Portal also excludes information on the pay of public officials, as a means of maintaining their privacy. Information on salaries by career group and level is available from, and a link provided through the Transparency Portal to, the website of the Federal Ministry of Planning, Budget and Management.

Table 2.1. **Main query options using Brazil's Transparency Portal**

Category	Queries
Revenues	Public organisation Type of revenue
Direct federal expenditure	Type of expenditure Federal public organisation (*i.e.* executing organisation) Government action (*i.e.* sub-programme) – federal public organisations – not-for-profit organisations – individuals, companies and associations – legal persons by economic activity Travel and *per diem*
Federal government Payment Card	By organisation By card holder
Transfer of resources	Transfer to states/municipalities Transfers by government action Transfers to: – federal public organisation – not-for-profit organisation – legal persons per economical activity – other legal persons
Administrative agreements	Transfers to: – state/municipality – sub-national public organisation – not-for-profit organisations Transfers by: – week – month
Register of Debarred Enterprises	Number of National Register of Legal Persons (*Cadastro Nacional Pessoa Jurídica*) Type of sanction
Public officials	By name or number at the National Registry of Persons (*Cadastro de Pessoas Físicas*) By "positions and functions of trust and gratifications" (*Cargos e Funções de Confiança e Gratificações*) By public organisation

The Transparency Portal has evolved with input from public authorities, citizens and the Council on Public Transparency and Combating Corruption

The current state of the Transparency Portal is the result of a seven-year evolution process (see Table 2.2). Input into the creation of the Transparency Portal was provided by a working group with experience in both the technical and informational aspects of the portal. The group was comprised of officials from the Office of the Comptroller General of the Union, the Secretariat of National Treasury and the Federal Service of Data Processing (*Serviço Federal de Processamento de Dados*).[9] The final content of the Transparency Portal was and still is decided by the Office of the Comptroller General of the Union. Suggestions made by citizens through the portal's "contact us" link and at events to discuss the portal have also been adopted by the Office of the Comptroller General of the Union. Examples of citizen suggestions: *i)* allowing searches by not-for-profit organisations that receive federal funds, made by Transparência Brasil among others, in April 2006. This was subsequently implemented in December 2008; *ii)* allowing searches by Federal Government Payment Card holders, made by journalists among others, in May 2008. This was subsequently implemented in December 2008; and *iii)* allowing downloads of raw data on administrative agreement, made by citizens and journalists in 2008. This was subsequently implemented in December 2008.

Table 2.2. **Evolution of information available through Brazil's Transparency Portal**

Year	Description	Data source
November 2004	Data on Family Grant Programme	Federal Savings Bank
November 2004	Data on Unified Health System	Federal Ministry of Health/National Health Fund
June 2005	Data on direct expenditure by the public administration	Secretariat of the State Treasury/Federal Government Financial Administration System
December 2005	Data on federal government Payment Cards	Bank of Brazil
December 2006	Data on federal administrative agreements	Secretariat of the State Treasury/Federal Government Financial Administration System
December 2008	Data on suppliers that committed irregularities in public procurement and administrative contracts	Office of the Comptroller General of the Union/Registry of Ineligible and Suspended Companies
January 2009	Data on federal administrative agreements	Federal Ministry of Planning, Budget and Management/Administrative Agreement and Transfer Contract Management System
December 2009	Data on revenue receipts	Secretariat of the State Treasury/Federal Government Financial Administration System
December 2009	Data on state and municipality expenditure	Secretariat of the State Treasury/Federal Government Financial Administration System
December 2009	Data on public officials: registration number, position/function, level, public organisation, office location, etc.	Federal Ministry of Planning, Budget and Management/Federal Personnel Management System
May 2010	Data on expenditure estimates for 2014 World Cup and 2016 Summer Olympic Games	Multiple sources
May 2010	Daily information on financial expenditure of the federal public administration	Secretariat of the State Treasury/Federal Government Financial Administration System

In addition, the Transparency Portal features a direct mail system that allows citizens to receive email notifications on the release of funds to specific municipalities in their interest. This system began with about 1 500 subscribers in April 2007 and increased to more than 34 500 subscribers in December 2010. Information is also available through a quarterly bulletin produced by the Office of the Comptroller General of the Union, since December 2008, with information on the actions and results of the Transparency Portal and other transparency policies of the federal public administration.[10] The bulletin includes statistics on access and citizen service, new features and new queries related to the Transparency Portal. Finally, the Office of the Comptroller General of the Union – together with the Secretariat for Social Communication (*Secretaria de Comunicação da Presidência*) of the Office of the President of the Republic – has released three television commercials as part of a campaign titled "The Right to Know." These commercials were televised 550 times during different time slots over the period between August 2009 and January 2010 on 18 open and cable television channels. In addition, information on the Transparency Portal is disseminated by press releases and in the federal government's interaction with the media.

The two chambers of the National Congress operate parallel electronic portals that promote transparency of budget execution

Whereas most OECD member countries do not have publicly available government expenditure reporting system, Brazil has three – raising some questions concerning duplication. In addition to the Transparency Portal, two other portals exist within the federal government for monitoring federal government budget execution: *i)* SIGA Brasil (meaning "to follow up" in Brazilian Portuguese) is run by the Federal Senate (*Senado*); and *ii) Fiscalize* (meaning "to monitor") is run by the Chamber of Deputies (*Câmara dos*

Deputados). Table 2.3 compares the Transparency Portal with SIGA Brasil and *Fiscalize*. A key difference among the three portals is that the Transparency Portal allows citizens to search by expenditure modality (*e.g.* Federal Government Payment Cards) and access information on recipient of funds (*e.g.* conditional cash transfer recipients, recipients of government contracts, etc.). The separation of powers has led to these separate expenditure monitoring and tracking portals for the executive and legislative branches. There are two portals within the legislature due to co-existing budget research units within the two chambers of the National Congress (*i.e.* the Federal Senate and Chamber of Deputies).[11]

Proactive transparency in public expenditure is replicated at the level of individual public organisations

Federal public organisations are obliged to publish data and information related to budget execution and financial reporting, on a dedicated transparency page linked to their website. In December 2010, 443 transparency pages existed within the federal public administration: 230 from the direct public administration (federal ministries and the secretariats and departments therein), 129 from agencies, 34 from foundations, 32 from mixed-capital enterprises and 18 from state owned-enterprises. An Inter-ministerial Decree by the Office of the Comptroller General of the Union and the Federal Ministry of Planning, Budget and Management outlines the minimum content of these transparency pages. They must include information on: *i)* budget execution; *ii)* procurement and administrative contracts; *iii)* administrative and transfer agreements; and *iv)* travel and *per diem* expenditure.[12] Exemptions apply to data and information that must be kept secret for national security. In addition, pages are required to include a glossary and to use easy-to-understand language.

The Office of the Comptroller General of the Union is formally responsible for monitoring the implementation of the transparency pages. To facilitate the adoption of the transparency pages by federal public organisations, the Office of the Comptroller General of the Union has developed a standard website template for the disclosure of information required by the inter-ministerial decree. For public organisations that make full use of the common back-office systems of the federal public administration, data is directly extracted and exported for use on the transparency page. The Office of the Comptroller General of the Union may maintain the transparency pages of public organisations which request it to do so. In total, the transparency pages of 442 federal public organisations are maintained by the Office of the Comptroller General of the Union. Within the direct federal public administration, only the Federal Ministry of Justice transparency page is not maintained by the Office of the Comptroller General of the Union (see Box 2.1).

The Office of the Comptroller General of the Union and the Federal Ministry of Planning, Budget and Management could expand the content of the transparency pages to include, among other items: *i)* relevant laws and regulations; *ii)* Charter of Citizens' Services (discussed below); *iii)* annual management reports; and *iv)* external audit reports. In addition, and in line with recommendations in Chapter 5, procurement and contract information may be accompanied by annual procurement plans and information on contract amendments above a particular threshold (defined as a share of the original price). In the medium-long term, it may be beneficial for the federal government to assess the possibility of streamlining and standardising the websites of federal public organisations to include the information currently contained within the transparency pages. At present, the transparency pages are stand-alone websites separate from that of the federal public organisation.

Table 2.3. **Comparison of Brazil's budget execution monitoring portals**

	Portal da Transparência (Federal public administration)	*SIGA Brasil* (Federal Senate)	*Fiscalize* (Chamber of Deputies)
1. Date of service available for citizens	November 2004	December 2004	September 2009
2. Expenditure/revenues, search			
By federal public organisation			
Public organisation	●	●	o
Administrative unit	●	●	o
By federal programmes			
Programme	●	●	●
Sub-programme/activity	●	●[2]	o
By expenditure type/modality			
Procurement and administrative contracts	●	●	●
Federal government Payment Cards	●	o	o
Administrative agreements and transfer agreements	●	●	●
Transfers to households/individuals	●	●	●
By recipient of funds			
Individuals/households	●[1]	●[3]	o
Suppliers/businesses	●[1]	●[3]	o
By revenues	●	●	o
3. Non-budget information			
Sanctioned suppliers	●	o	o
Public officials	●	o	o
4. Time series and frequency of update			
Time series	From 2004[4]	From 2000[5]	From 2006
Frequency of update	Daily	Daily	Weekly
5. Functionality			
Export data	o	●	o
GPS mapping	o	●	o
Search history	o	●	o
6. Contact ombudsman/report misconduct	●	o	●
7. Other			
Glossary	●	●	●
Written instructions/FAQ	o	●	o
Online video instructions	o	●	o
Email help	●	●	o
Telephone help	o	●	o

Notes: ● = yes; o = no.

1. For individuals and enterprises.

2. In select cases, such as transfer to the municipal government and advanced queries.

3. In case of transfer to municipal governments, only to legal persons.

4. Administrative agreements from 1996; and Federal Government Payment Cards from 2002.

5. Administrative agreements from 2003.

Source: Secretariat for Corruption Prevention and Strategic Information, Office of the Comptroller General of the Union.

Box 2.1. **Brazil's Federal Ministry of Justice transparency page**

The transparency page of the Federal Ministry of Justice is published in the scope of its Transparency Programme (established by Federal Ministry of Justice Decree no. 3 746/2004). The transparency page includes information on public expenditure, public procurement and administrative contracts (including information on bids and a list of penalised companies), agreements involving the transfer of funds, travel and per diem expenditure, legal recommendations, minutes of the ordinary and extraordinary meetings of the various advisory councils (conselhos), public consultation, programme results and disciplinary procedures. This information is submitted through the Federal Ministry of Justice Expenditure Tracking System (Sistema de Acompanhamento de Despesas Relevantes) and the Federal Government Financial Administration System. In the case of activities by the Departments of Federal Police and Federal Highway Police, disclosed information is provided in summary form to protect the confidentiality of activities and security of its public officials.

The programme has been implemented in two phases. During the first phase the Federal Ministry of Justice sought to refine its interpretation of what constitutes transparency as outlined in the 1988 Federal Constitution (Article 37). During this stage, the Federal Ministry of Justice created a website to disclose information on its activities in simple and accessible language. During the second phase, attention has focused on presenting information on the ministry's expenditure and disciplinary activities to educate the public and create public trust in the activities of the Department of the Federal Police.

Source: Federal Ministry of Justice.

The adoption of transparency pages by state-owned and mixed-capital enterprises is less widespread. In 2007, the Institute for Oversight and Control (*Instituto de Fiscalização e Controle*), a Brazilian non-governmental organisation, conducted a survey to examine whether state-owned enterprises and mixed-capital enterprises had established their own transparency pages. It found that, of Brazil's 112 state-owned and mixed-capital enterprises, only 28 had a transparency page. Where a transparency page exists, information published is often incomplete. Only 26 enterprises provide information on budget execution, and only 22 provide information on procurement and administrative contracts. The challenge in these enterprises publishing information on a transparency page reflects their autonomy to use different back-office management systems from the federal public administration. As the data above shows, the number of transparency pages for state-owned and mixed-capital enterprises has almost doubled (from 28 to 50) between 2007 and 2010. However, concern remains about the comprehensiveness of data contained in the transparency pages of such enterprises.

A number of federal public organisations also publish information related to the non-financial performance of their programmes and the social challenges that they address. For example, the Federal Ministry of Social Development and the Fight Against Hunger's "Social Information Matrix" (*http://aplicacoes.mds.gov.br/sagi/mi2007*) provides information on social programme outputs and outcomes. The data is accessible to citizens, who may use it to generate customised tables, graphics and maps, and download the related data files. The same data are used by the Federal Ministry of Social Development and the Fight Against Hunger to monitor and evaluate its programmes. Another example is the Federal Ministry of Health, which publishes information on health actions and health management through its "Situation Room" (*www.saude.gov.br/saladesituacao*). Information on health actions and health

management is compiled through the "Situation Room" with other forms of socio-economic, epidemiological and public health data. Through this portal, citizens can drill down through the data but cannot generate their own figures and graphs.

DadosGov (*http://i3gov.planejamento.gov.br/coi*) provides data on government programmes gathered among different organisations within the government. Information on different areas, such as the economy, social development, education and employment are available from 2003. Information may be obtained as tables, graphs and maps accompanying metadata and addresses of suppliers of data. The site also provides the extraction of the data in different formats (*e.g.* CSV, RTF, PDF, XLS, XML). DadosGov is developed by the Committee for Organisation of Information of the Presidency of the Republic. The Committee for Organisation of Information Executive Secretariat is composed of officials from the Deputy Office of Information for Decision Support, Secretariat of Institutional Relations (within the Office of the President of the Republic) and the Secretariat of Logistics and Information Technology (within the Federal Ministry of Planning, Budget and Management). Currently, a working group organised by the Federal Ministry of Planning, Budget and Management is working to create the National Infrastructure for Open Data (*Infraestrutura Nacional de Dados Abertos*) to facilitate the creation of data warehouse initiatives. This infrastructure is proposed to be aligned with modern principles of open government, including direct access to data, indexed data and interoperability.

Efforts have begun to expand transparency to all levels of government, in a phased manner, by 2013

Since 2009, all levels of government are required to publish on the Internet detailed real-time information on their budget execution, similar to the Transparency Portal (see Complementary Law no. 131/2009). This law, amending the 2000 Fiscal Responsibility Law (Complimentary Law no. 101/2000), gives 3 deadlines for the phased implementation of increased transparency requirements: 1 year for states, the Federal District and municipalities with over 100 000 inhabitants; 2 years for municipalities with 50 000-100 000 inhabitants; and 4 years (*i.e.* until May 2013) for municipalities with less than 50 000 inhabitants. It also establishes the possibility of sanctions for non-compliance with the new transparency requirements, like the withholding of voluntary transfers from the federal government, which are very important for smaller states and municipalities. The Fiscal Responsibility Law states that the responsibility of sanctioning local governments falls under the jurisdiction of the legislative branch (either directly or with the support of the Federal Court of Accounts), the internal control authorities and the Office of the Public Prosecutor.

To support the implementation of the amended Fiscal Responsibility Law, the Office of the Comptroller General of the Union created in December 2009individual transparency pages for each state, municipality and the Federal District. Previously, only 12 states had their own transparency page.[13] Some Brazilian states have gone further, and publish information on public works such as Ceará (*cameras.gabgov.ce.gov.br/cameras*), Santa Catarina (*www.sicop.sc.gov.br/sicop*) and Espírito Santo (*www.siges.es.gov.br/transparencia/projetos.aspx*). In Santa Catarina, citizens have been able to use spatial maps for searching public works performed in their state since 2000, including emergency works responding to the 2008 floods.

Box 2.2. Civil society monitoring of budget transparency at the state and municipal level in Brazil

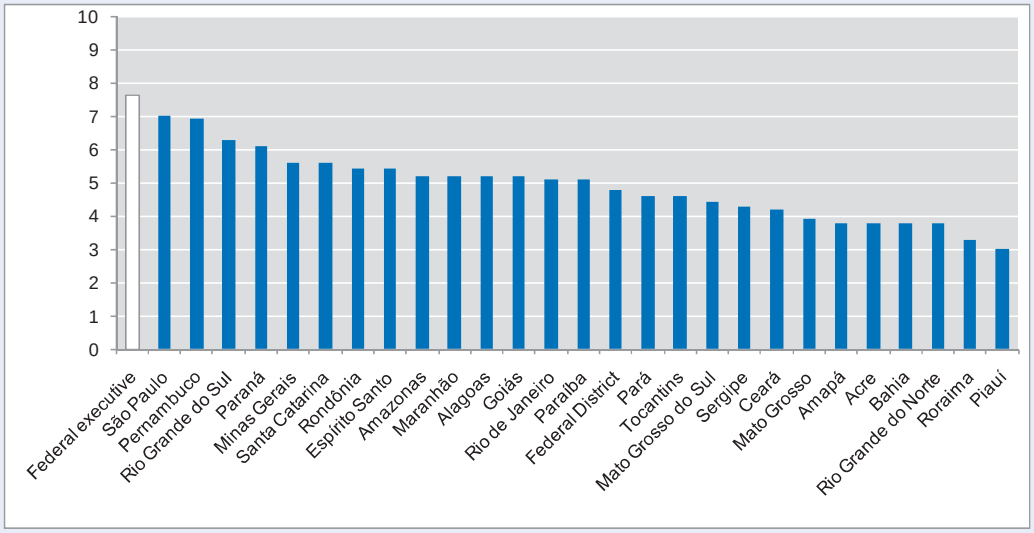
Contas Abertas (meaning "open accounts" in Brazilian Portuguese), a Brazilian non-governmental organisation, supports the monitoring of implementation of transparency policies at state and municipal levels through its efforts to create a transparency index. Contas Abertas receives no funding from the public sector. The transparency index initiative has the support of civil society and professional organisations, such as the Brazilian Bar Association (*Ordem dos Advogados do Brasil*) and the Brazilian Enterprise Council for Sustainable Development (*Conselho Empresarial Brasileiro para o Desenvolvimento Sustentável*).

A month and a half after the deadline for states, the Federal District and municipalities with over 100 000 inhabitants to comply with Complementary Law no. 131/2009, Contas Abertas released a transparency index ranking the transparency of state governments. Created with the help of a committee of experts, the index takes into account the analysis of a set of 110 items from the official websites, divided into 3 topics: content, usability of the portals, and updating frequency and availability of historical time series. As such, the index contains some additional criteria beyond the scope of the requirements of Complementary Law no. 131/2009 (*e.g.* the usability of the portals).

The results show significant variation in the level of budget transparency across Brazil's 26 states, the Federal District and the federal public government. Among those states with the highest level of transparency are São Paulo, Pernambuco, Rio Grande do Sul, Paraná and Minas Gerais. The Transparency Portal of the federal public administration, however, provides the highest level of transparency. Contas Abertas also provides a written assessment (in Brazilian Portuguese) on each government website, explaining the grades obtained on each one of the three evaluation topics, and emphasising the strengths and the main issues detected. In the first assessment, most weaknesses identified had to do with difficulties in navigating the websites and in capturing and transferring data from them.

Contas Abertas intends to release a revised index for these states every six months. In addition, it plans to release indexes for: *i)* the 26 capital cities and municipalities with more than 100 000 inhabitants in November 2010; *ii)* municipalities with between 50 000 and 100 000 inhabitants in June 2011; and *iii)* municipalities with less than 50 000 inhabitants in June 2013.

Contas Abertas' state budget transparency index, 2010



Source: *www.indicedetransparencia.org.br*.

Issues of access and usability are among the main challenges of using new technologies to support proactive transparency

According to the Institute of Geography and Statistics (*Instituto Brasileiro de Geografia e Estatística*), only 35% of Brazil's population had access to the Internet in 2008. These numbers reflect significant gains in Brazil to expand Internet access in recent years. Though this has increased from 20% in 2005, it is still far below many OECD member countries. In comparison, Internet penetration is over 90% in Korea and around 40-45% in Portugal and Spain. A lack of infrastructure affects large segments of Brazil's population, mainly in rural areas, and is the primary barrier to Internet connectivity. Brazil's figures are more on par with Chile (32%) but much higher than in Mexico (10%) (OECD, n.d.). As in many Latin American countries, mobile technologies adoption has largely outpaced Internet adoption in Brazil. In 2008, more than 50% of Brazil's population had mobile phones, whereas this number was below 35% in 2005. The use of the Internet by Brazilian citizens to access government services and information online is relatively limited. A 2009 survey of 20 000 households found that only 27% of the population over 16 years of age accessed e-government services within the previous 12 months (CGI, 2009).

The federal government has expressed concern over the high use of new technologies in disseminating information but feels that it is the only means to provide information in a reliable, timely and cost-effective manner. Previously, the Office of the Comptroller General of the Union conducted a pilot to disseminate information on government activities through information kiosks run by a state-owned bank with branches in every Brazilian city. The transaction costs of providing information and keeping it up to date were too high. Rather, the federal government is taking action to close the country's digital divide. The National Plan for Broadband Internet Access (*Plano Nacional de Banda Larga*), for example, aims to provide low-cost and high-speed broadband connections to nearly 90% of Brazil's population by 2014. It will reduce the current average price charged for broadband access by 70% in 4 278 (out of 5 564) municipalities and to expand the current 13.5 million households that have access to the Internet in Brazil to 35 million during this period. The Office of the Comptroller General of the Union is also working with non-governmental organisations and municipal participatory councils to disseminate the information more broadly.

Some with access, however, have found the usability (the design of technologies that are intuitive and user-friendly) and functionality of the Transparency Portal challenging. For example, the Transparency Portal does not offer the possibility to search more than one year in order to allow for time-series analysis. Nor does the Transparency Portal allow users to generate graphs for analysis or allow data to be exported (as in the case of the United Kingdom's COINS). Supporting citizens to do additional analysis can contribute to better accountability, oversight and direct social control. In the immediate future, the portal could be changed to allow online comparisons of expenditure data across years. Expenditure data could also be made downloadable, as is the case for data on government administrative agreements. In the medium-term, online analytic tools could be developed and expenditure data could be complemented with non-financial programme performance data. In discussions with the OECD Secretariat, the Office of the Comptroller General of the Union noted that the ability to download information was being considered for the next stage of development for the Transparency Portal.

Monitoring and evaluating the impact of the Transparency Portal is an evolving area

The Office of the Comptroller General of the Union measures the average time spent on the website, as well as its bounce rates (*i.e.* the percentage of visitors leaving the site after viewing only the page on which they landed), pages per visit, visitors, most demanded searches, among other data. Access numbers have been used to identify demands for different queries and the depth of information researched by users. This analysis allows web managers to prioritise the most requested information in the layout. Bounce rates can be used to improve the frequently asked question section, for example. The current measures do have limitations, however. For example, between July and November 2007 web crawlers tried to extract information from the Transparency Portal, resulting in a sharp increase in the number of pages visited. The Office of the Comptroller General of the Union notes that more detailed monitoring of the use of the Transparency Portal would require registration and passwords, and that this may result in diminished use.

There have been a number of concrete cases where the Transparency Portal has supported direct social control of government activities. At the beginning of 2008, Brazil's domestic media published continuous reports about "suspect" expenditure made using Federal Government Payment Cards. In one case, the reports led to the resignation of a federal minister. In other cases, the portal's data has given rise to unsubstantiated media reports. For example, the purchase of velvet from a furniture repair shop called "Teddy Bear's Land" was denounced in the media as a misuse of the Federal Government Payment Card for a teddy bear.[14] (The Transparency Portal shows the purchase date, name of the shop where purchase was made and value of the purchase along with the card owner's name. Some shop names can lead to misinterpretations.) In many cases, and following clarifications from public organisations, newspapers published formal apologies. As a consequence, according to the Office of the Comptroller General of the Union, some journalists prefer to consult with the government before publishing stories in the media.

While the Office of the Comptroller General of the Union has decided not to introduce registration and passwords that could support monitoring activities, a number of other channels are available. For example, and as mentioned above, there are currently more than 30 000 subscribers to the Transparency Portal direct mailing system (as of July 2010). They could be periodically surveyed, using online instruments, on their use of the Transparency Portal and the transparency pages of the federal public administration. This would allow an assessment of existing users but not necessarily those that do not use the portal. Capturing such information could be achieved by working in partnership with other organisations that conduct annual household surveys of the use of e-government services or information and communications technologies more generally. Such partnerships have the potential to reduce the cost of surveys while capturing the views of others that do not currently use, or are not necessarily aware of, the Transparency Portal. In this regard, the Office of the Comptroller General of the Union notes that small surveys have been conducted regarding the administrative agreements. This has not yet been done using people on the mailing list.

Transparency in service delivery and broader government operations

Whereas transparency in the management of public finances provides information on the implementation of policies, it does not help citizens to access these services or to assess the functioning of the public administration. Actions have been taken by the federal government of Brazil to increase accountability and citizen orientation of public service delivery. These actions include the creation of an obligation for all federal public organisations to establish a Charter of Citizens' Services in 2009 and increasing the number of organisational ombudsman units since 2003. Brazil has, however, yet to establish a comprehensive freedom of information law, as is present in all OECD member countries. Despite the absence of such a law, the federal government has put in place various policies to foster proactive transparency and enhance citizen engagement (see Table 2.4). Actions are now being taken to prepare for the eventual implementation of a freedom of information law.

Table 2.4. **Proactive disclosure of information by central government in Brazil and select OECD countries**

	Budget documents	Annual ministry reports, including accounts	Audit reports	All government policy reports	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Administrative data sets	Information describing the types of records systems and their contents and uses	Information on internal procedures, manuals and guidelines	Description of the structure and function of government institutions	Annual report on freedom of information law
Australia	⊙	●	⊙	○	⊙	○	⊙	●	●	●	⊙
Brazil	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	○
Canada	●	●	●	○	●	○	⊙	●	●	●	●
Chile	●	⊙	●	○	●	●	○	○	○	●	⊙
France	●	●	○	⊙	○	○	○	○	○	●	●
Germany	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Italy	●	●	●	●	●	●	⊙	⊙	⊙	●	●
Japan	⊙	○	⊙	○	⊙	○	○	⊙	○	⊙	⊙
Korea	●	●	●	●	●	○	●	●	●	●	●
Mexico	●	●	●	●	●	●	⊙	●	●	●	●
Portugal	●	●	●	⊙	●	○	○	●	●	●	●
Spain	●	●	●	○	●	○	○	⊙	●	●	○
United Kingdom	●	⊙	⊙	○	⊙	⊙	⊙	⊙	○	⊙	●
United States	⊙	⊙	⊙	⊙	⊙	○	⊙	●	●	●	●

Notes: ● = Required to be proactively published by freedom of information law; ⊙ = Not required by freedom of information law, but routinely published; o = Neither required nor routinely published; N/A = information not available

Source: Adapted from OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, doi: 10.1787/22214399..

Charters of Citizens' Services are being introduced to improve transparency, performance and accountability

As of 2009, federal public organisations are obliged to publish a Charter of Citizens' Services to promote accountability and orient their activities to services users.[15] Brazil's actions to establish such charters are similar to, and have been influenced, by a growing number of OECD member countries and emerging peers (*e.g.* Argentina, Italy, Mexico, the Netherlands, Spain and the United Kingdom). The Charter of Citizens' Services is one element of Brazil's National Programme for Public Management and De-bureaucratisation (*Programa Nacional de Gestão Pública e Desburocratização*) and the development of a Model of Excellence in Public Management (*Modelo de Excelência em Gestão Pública*).[16] Parallel activities include guidance on: *i)* evaluating quality and user satisfaction through the creation of manuals; *ii)* performance measurement through the formulation of a reference guide and the development of performance indicators; and *iii)* simplifying management processes. Together these actions focus on management assessment, process simplification and service quality improvements.

Federal public organisations are required by federal decree to include the following content in their charters: *i)* the types of services provided and ways to access them; *ii)* the necessary documentation and information to be provided by citizens to access services; *iii)* the main steps and maximum time for the delivery of services; and *iv)* channels through which federal public organisations are to communicate with citizens. The same federal decree establishing the obligation to create a charter includes two additional requirements. First, federal public organisations are obliged to access information from existing official federal government-run databases where available, instead of from citizens, as a means of cutting red tape. Second, federal public organisations are obliged to evaluate user satisfaction of their services, and to publish the results of these surveys on an annual basis. Aside from these requirements, the formulation of a Charter of Citizens' Services is largely decentralised, with the intention of developing ownership within public organisations.

To foster the adoption of charters by federal public organisations, the Federal Ministry of Planning, Management and Budget has developed a methodology for implementation and provides seminars and e-learning courses for public officials. The methodology was published in 2009 and aims to guide public organisations in developing and disseminating service commitments to citizens (see MPOG, 2009). Between end-2009 and end-2010, 3 seminars were held, including one for 130 ombudsman units from the federal public administration.[17] Four e-learning classes, lasting for a period of one month, were held between July and September 2010. The Federal Ministry of Planning, Budget and Management also accommodates requests to meet directly with public officials during the drafting process and encourages public officials to share charters before their publication for an "informal" review. However, there is no obligation for federal public organisations to share their charters before publication and the Federal Ministry of Planning, Budget and Management has limited resources to support them.

These charters go beyond the basic rules of protecting citizens' rights and supporting public service delivery as outlined in federal Law no. 9 784/1999 on Administrative Procedures within the federal government. This law outlines the principles that the federal public administration should recognise. These principles include legality, proportionality, morality and efficiency. Moreover, it gives citizens the right to: *i)* be treated with respect by public officials; and *ii)* be informed of administrative proceedings in which they have an interest. The same law also obliges citizens to provide truthful information in good

faith, to be courteous and to divulge all necessary information and comply with requests for clarification when interacting with the federal public administration.

By the end of October 2010, 8 federal public organisations had published a Charter of Citizens' Services.[18] These charters are made available both in a printed format at points of service and electronically through the Internet. There is, however, great heterogeneity in the style of charters that have been published to date. For example, the National Institute of Social Security (*Instituto Nacional do Seguro Social*) Charter is four pages, including two pages about the organisation and a two-page table with information on the services that it delivers. The National Health Surveillance Agency (*Agência Nacional de Vigilância Sanitária*) Charter is 72 pages and includes information on the structure and organisation, as well as its relationship with the National Congress.

Box 2.3. **Brazil's National Institute of Social Security's Charter of Citizens' Services**

The National Institute of Social Security, a public pension scheme, established a charter in December 2009; it addresses how citizens should access information, methods of understanding information that is made available by the institution to the public and more specific information designed to help citizens navigate through information.

The National Institute of Social Security's Charter aims to put forth a structure that is easy to access and increases understanding of the responsibilities of the institution, its staff and the Brazilian citizen. The document is structured in three main parts:

- an introduction including the National Institute of Social Security mission, function and organisational structural (*e.g.* number of agencies, etc.);
- modes for interaction with public officials, including how to obtain basic information from the organisation, including contribution and pension schemes; and
- a structured table allowing citizens to navigate information on services and service standards.

Annex 2.A1 presents the matrix of services, including services that must be requested by citizens (*e.g.* various types of pensions), services available to citizens with medical conditions (*e.g.* handicap pension, medical and accident assistance), services available to citizens requiring social assistance, as well as services that do not require scheduled appointments.

For example, a citizen requiring accident assistance must have been involved in an accident that inhibits his/her capacity to work, and must be linked to the National Institute of Social Security. In requesting such assistance, the citizen must provide their Employee Identification Number (*Número de Identificação do Trabalhador*), number at the National Registry of Persons (*Cadastro de Pessoas Físicas*), Welfare and Employment Book (*Carteira de Trabalho e Previdência Social*) or other documentation to provide evidence regarding their contribution to the National Institute of Social Security.

The National Institute of Social Security Charter does not, however, provide information on the type and ways to access services; the main steps and maximum time for delivery of the service – as is required under the federal decree establishing the obligation to formulate a Charter of Citizens' Services.

Source: INSS (2009), "Carta de Serviços" [Charter of Services], *www.gespublica.gov.br/biblioteca/pasta.2009-11-13.2764930026/Carta%20Servicos%20-%20INSS.pdf*.

None of the charters to date have been formulated with the involvement of citizens and service users. Doing so can ensure that the charters are understood and considered relevant to stakeholders' respective needs and help raise awareness of stakeholders' rights and obligations. The current Federal Ministry of Planning, Budget and Management guidance notes refer to the creation of a "working team" that must have knowledge of the organisation's service delivery processes. It notes that the team should interact with senior management officials as well as officials involved in service delivery. Involving stakeholders can also complement activities to evaluate whether a charter has been appropriately applied. Moreover, none of the charters published to date include a commitment to maintain professional excellence and high standards of conduct, or information about service standards for the ombudsman and appeals functions. The inclusion of information regarding professional excellence and information regarding the ombudsman and appeal function can help create a more holistic approach and build trust in federal public organisations. Ultimately, however, trust is created through the effective implementation of the charter and efforts to improve service standards over time.

Much of the assistance provided by the Federal Ministry of Planning, Budget and Management focuses on the concept and content of the Charter of Citizens' Services rather than their implementation. The methodology does not include the process of preparing internal protocols and procedures to support a charter's implementation. It simply states that public organisations should be ready to fulfil the commitment disclosed in their respective charters. Experience from OECD member countries highlights the need to develop protocols and procedures, for example, on how to advise citizens of information contained within an organisation's charter as part of service delivery, regular interactions with citizens and awareness-raising activities. This advice also serves to ensure that charters are implemented evenly across organisational units and public organisations.

Responsibility for monitoring and evaluating the implementation of the charters has formally been placed within the Office of the Comptroller General of the Union. At the time this chapter was prepared, it was still evaluating what would be the best procedure for monitoring the adoption and efficiency of the policy. While responsibility has formally been placed within the Office of the Comptroller General of the Union to monitor and evaluate the implementation of the charter, this should serve as a means of independence assurance for management. These responsibilities may be best located in each public organisation's respective organisational ombudsman units. These units, as discussed below, serve more as a citizen relations unit rather than a traditional ombudsman. Public managers must also be made responsible and accountable for the implementation of the charter responsibilities.

Over time, the Federal Ministry of Planning, Budget and Management could publish a good practice guide for implementing a Charter of Citizens' Services drawing upon the experience of public organisations. Such a guide can support management improvements by highlighting where good practices are being employed in the federal public administration and sharing them with all federal public organisations. Good practice guides are already published by the Federal Ministry of Planning, Budget and Management for strategic planning, managing for results and cutting red tape. These have been developed using case studies typically prepared by public organisations themselves. Departing from the current model of presenting good practice, the Federal Ministry of Planning, Budget and Management could play a key role in evaluating what it considers good practice. In doing so, attention could focus on the experience of multiple public organisations to develop issues for consideration or checklists for public officials as they

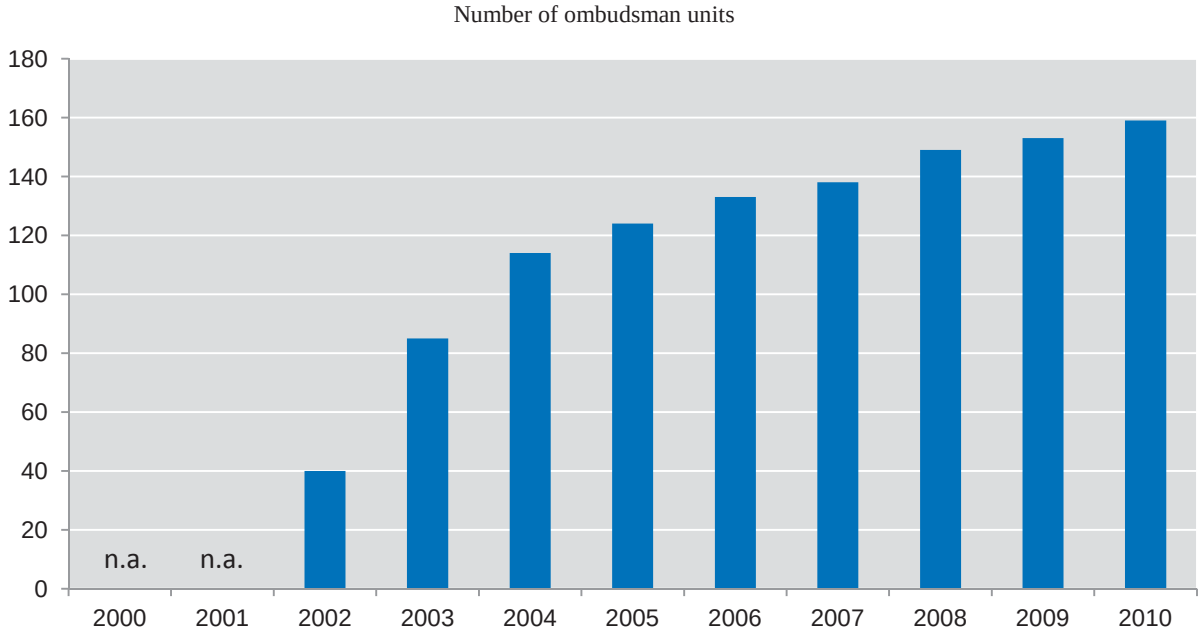
implement a charter. Good practice guides may be produced in conjunction with monitoring and audit activities prepared to evaluate the implementation of charters within individual public organisations. Moreover, good practices need not only originate from federal public organisations but also state and municipal public organisations, in Brazil or overseas.

Organisational ombudsman has been created as a channel for citizens to request information and appeal administrative decisions

An ombudsman establishes a point of contract for citizen's complaints, appeals and claims for redress in their dealings with public organisations. Almost all OECD member countries have created an ombudsman, although their functions, roles and independence vary according to each country's political-administrative system. In Brazil, the ombudsman function was first established in the mid-1980s at the local level in response to social demands emerging with the democratic transition. The first ombudsman was established by the mayor of Curitiba in the state of Paraná in 1986 (Pinto, 2006). As of 2010, there were over 200 ombudsman offices at a municipal level (out of a total of 5 564 municipalities in Brazil). At the federal level, the position of Ombudsman General was established in 1986 but discontinued some months later. It was not until 1992 when the Ombudsman General was once again established at the federal level within the Federal Ministry of Justice.[19] At this time the ombudsman function was headed by the Executive Secretary of the Federal Ministry of Justice, with members of the Legal Counsel and the Secretary for Legislative Studies of the same federal ministry. A number of the ombudsman units were also established within state-owned and mixed-capital enterprises and regulatory agencies during the 1990s following the promulgation of the Consumer Protection Act in 1990.[20]

In 2002, the ombudsman function was integrated into the newly established Office of the Comptroller General of the Union in an attempt to invigorate the ombudsman function as a means to protect individual and collective rights against illegal or unfair administrative acts.[21] Since the relocation of the Ombudsman General from the Federal Ministry of Justice to the Office of the Comptroller General of the Union, the number of ombudsman units within the federal public administration has increased by nearly 400%, from 40 in 2002 to 157 in 2010 (see Figure 2.4). These ombudsman units deal with complaints and appeals, propose solutions and measures for redress and monitor and evaluate citizen satisfaction with federal public services. The goal, as expressed by the Ombudsman General, was for all federal ministries to have an ombudsman unit by the end of 2010. This equals three additional ombudsman units. The largest of the existing ombudsman units is located in the Federal Ministry of Health Ombudsman with 272 officials. Of the other ombudsman units, 75% have fewer than 6 officials. For the most part, the heads of these units are directly appointed (and may be removed) by the head of the respective public organisations to which they are located. In a small number of public organisations, such as regulatory agencies, ombudsman are nominated by the President of the Republic and approved by the Federal Senate for a term of three or four years.

Figure 2.4. **Growth of ombudsman units within Brazil's federal public administration**



Note: Three organisational ombudsman units were planned to be established in 2010, in the Federal Ministries of Cities, Education and Defence.

Source: Office of Ombudsman General of the Union, Office of the Comptroller General of the Union.

Brazil's Ombudsman General of the Union together with the ombudsman units function as organisational ombudsman (or a citizen's relations unit) rather than a classical (parliamentary) ombudsman. Both the Ombudsman General of the Union and ombudsman units have only informal methods for helping to resolve complaints or reports by citizens. They do not have any powers of investigation or organisational independence from the management of the public organisation to which they are attached. Rather, the Office of the Federal Public Prosecutor fills this responsibility. The public prosecutor's public-interest litigation function brings it close to a classical ombudsman. Consumer rights and environmental issues have been top priorities in protecting the public interest (see Chapter 1). Moreover, compared to a typical ombudsman in OECD member countries, the Office of the Federal Public Prosecutor can intervene proactively in court to protect individual and collective rights and interests. Commonly, this is carried out by bringing a public civil action (*ação civil pública*) before a court. If criminal behaviour is present, prosecutors can also bring the alleged offenders to court through the so-called public criminal action (*ação penal pública*).

Within the ombudsman system of the federal public administration, the Office of the Ombudsman General of the Union has several functions. It provides guidance to ombudsman units across the federal public administration by facilitating the exchange of information and articulating good practices. Where a federal public organisation does not have a specific ombudsman unit, it serves as the channel for interaction between citizens and the public administration. To perform these functions the Office of the Ombudsman General of the Union is arranged into three units: information management, case management and ombudsman relations. The Office of the Ombudsman General of the Union includes 24 officials (including 8 contractors and interns) with a budget of

BRL 350 000 (USD 210 000; EUR 150 000). The Ombudsman Relations Unit manages training for public officials working in ombudsman units within federal public organisations and develops educational programmes to promote direct social control. In 2009, the Office of the Ombudsman General of the Union held the first annual ombudsman workshop. The workshop was technical in nature with 80 participants from ombudsman units of federal public organisations. Among the topics discussed were the role of ombudsman units and the development of ombudsman reports.

In 2009, approximately 3 million reports were received by the Office of the Ombudsman General of the Union and the ombudsman units within the federal public organisations. This equates to around 16 requests per 100 000 citizens per year (see Figure 2.5A). Approximately 70% of these are requests for information, a further 23% of all interactions are complaints about service delivery and 1% reports about the conduct of individual officials (see Figure 2.5B). The number of reports varies between ombudsman units. The Federal Ministry of Health (*Ministério da Saúde*) Ombudsman call centres receive approximately 150 000 reports per week. The Federal Ministry of Labour and Employment (*Ministério do Trabalho e Emprego*) Ombudsman receives over 120 000 phone calls and 3 500 emails per week. The Social Security System (*Instituto Nacional do Seguro Social*) Ombudsman – covering approximately 26 million citizens receiving health, maternity and retirement benefits – receives approximately 350 reports per week. Most of the complaints relate to delays in receiving benefits. The Office of the Attorney General (*Advocacia-Geral da União*) Ombudsman receives approximately 115 reports per week.

Figure 2.5. **Reports received by Brazil's Office of the Ombudsman General of the Union and ombudsman units**

A. Number of reports, per 100 000 citizens

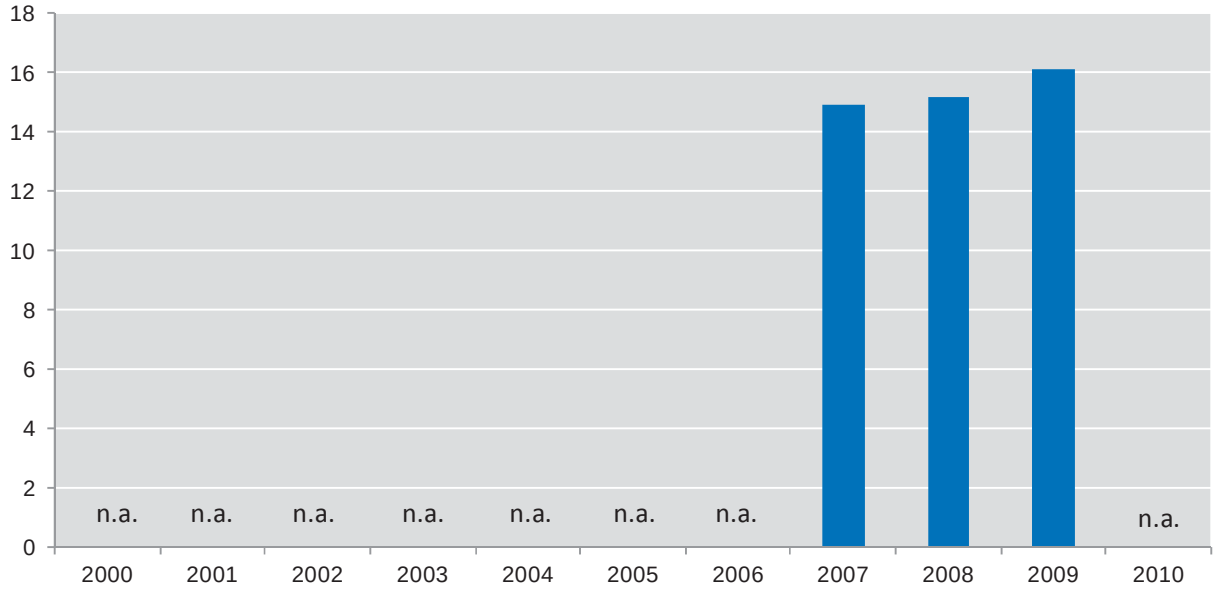
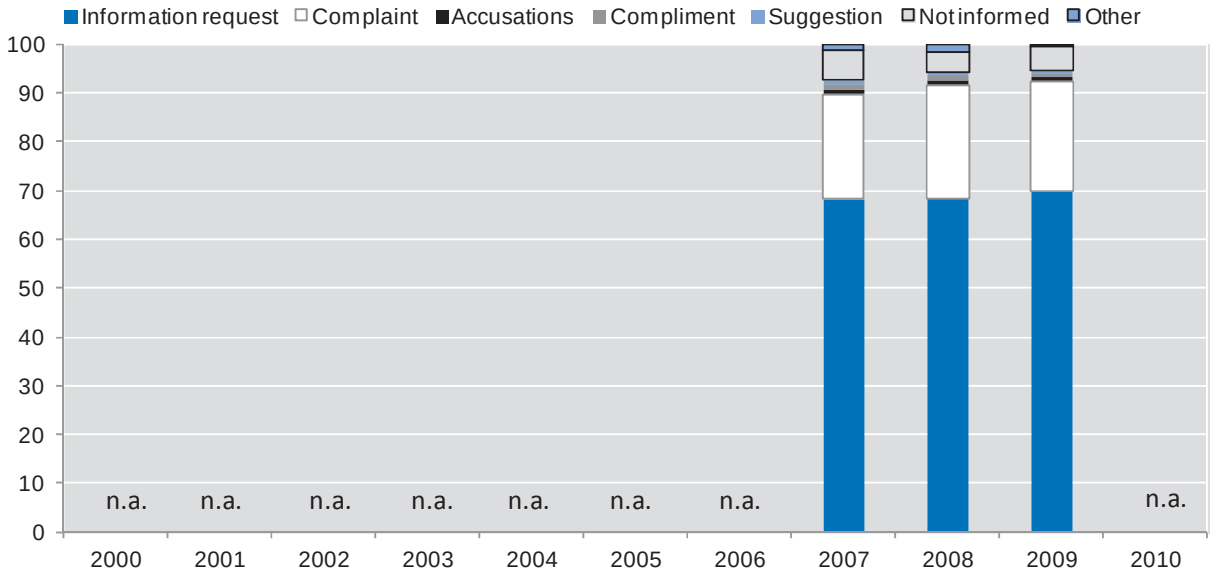


Figure 2.5. **Reports received by Brazil's Office of the Ombudsman General of the Union and ombudsman units (*cont'd*)**

B. By type of report, as a % of total



Notes: Information request: some reference (address, location and opening hours of administrative units, etc.), legislation, statistical data, etc. Complaint: an expression of displeasure or protest about a service, act or omission of the administration and/or public official and the presence or absence of regulatory standards. Accusation: information on an act, official or organisation that deviates from or does not observe the rule of law or due legal process, or causes injury or damage to public property. Compliment: showing appreciation, recognition, or satisfaction with services received. Suggestion: an idea or proposal for the improvement of work processes, administrative units and/or services provided.

Source: Office of the Ombudsman General of the Union, Office of the Comptroller General of the Union.

Ombudsman units enjoy a high degree of organisational autonomy in establishing their own internal procedures

Common procedures exist for processing complaints due to misconduct of specific public officials. In these cases, reports are forwarded to the ethics committee or the inspectorate of administrative discipline within the responsible public organisation in accordance with the content of the report. Reports related to breaches of conduct are sent to the ethics committee, other matters are sent to the inspectorate of administrative discipline. In the case that the report refers to a high public official (*i.e.* federal ministers, executive secretaries and secretaries, together with other level 6 managerial and supervisory officials) reports are sent to the Public Ethics Commission or the Inspectorate General of Administrative Discipline within the Office of the Comptroller General of the Union. (For a discussion on these two authorities, see Chapter 4.) Reports pertaining to the misuse of public funds are forwarded to the internal audit unit of the responsible public organisation. Requests for information and appeals are sent to the respective functional secretariat or administrative unit for response. There is no explicit harmonisation in the time and manner in which citizen requests for information are handled.

According to the Office of the Ombudsman General of the Union, requests are resolved within 30 days. Information is, however, not available on the quality of the "resolution," particularly in relation to requests for information. Federal ombudsman units collect different data and share it with the public in different ways. The Office of the Ombudsman General of the Union does not require a common framework for data management within the ombudsman units. It can only recommend the adoption of a common format and content for information provided, such as the number of requests for information by channel and period of time. OECD member countries collect far more detailed information on the processing of requests for information (see Box 2.4). To encourage better case management within ombudsman units, one option would be for the Office of the Ombudsman General of the Union to provide tools to help ombudsman units manage interactions with citizens.

In parallel, and because of the different responsibilities and powers of the Office of the Ombudsman General of the Union and the Office of the Federal Public Prosecutors, attention could be paid to facilitating dialogue and exchange between the two organisations. Dialogue and exchange may include such activities as: *i)* case management training for officials working in the ombudsman function; *ii)* standardisation of data and benchmarks relating to reports and citizens; *iii)* joint annual reporting of interactions with citizens; and *iv)* joint communication activities to inform citizens of their rights and the channels available to them to voice their concerns.

Box 2.4. **Collecting data to effectively manage and track requests for information: the experience of Chile**

Chile's Transparency and Probity Commission (*Comisión de Probidad y Transparencia*) has established rules on the management of requests for information and the processing points that must be monitored and reported. To support public organisations in meeting these requirements it has developed open-source software. While not mandatory, it is used by 125 public organisations and also serves as a reference for organisations that do not use it.

There are 24 points in the processing of requests for information that must be recorded and monitored. These are as follows:

1. Request admitted
2. Request not assigned (*i.e.* it has been received but not yet formally designated to an official for processing)
3. Request in process
4. Request assigned (*i.e.* it has been transferred to the responsible official for processing)
5. Request pending clarification (*i.e.* applicant was required to amend application as it did not meet all the requirements for admission)
6. Request analysed for competency (*i.e.* checked that the organisation that received the request has the competence to answer)
7. Request analysed for availability (*i.e.* checked that the information requested is available)
8. Request analysed for confidentiality
9. Request refers to others (*i.e.* it has been reported to a third party whose privacy rights would be infringed by the information, the third party could oppose the disclosure of information)
10. Means of reproduction verified (*i.e.* an assessment has been made of the availability of means to reproduce the information in the format requested)

Box 2.4. **Collecting data to effectively manage and track requests for information: The experience of Chile** *(cont'd)*

11. Cost of reproduction verified (*i.e.* an assessment has been made of the cost of reproduction)
12. Request requires additional time to process
13. Request completed (the following states correspond to sub-state of "completed")
14. Answer: payment pending (*i.e.* where the applicant has not paid the cost of reproduction so the delivery of the information requested is pending)
15. Answer: collection pending (*i.e.* the applicant has paid the costs but has not collected the information from the location where it was requested)
16. Concluded: delivered (*i.e.* information was provided and collected)
17. Concluded: partially delivered (*i.e.* part of the information requested was denied)
18. Concluded: requested information is permanently available to the public and, according to the law, application was notified of where to find the information
19. Concluded: not a request for information
20. Concluded: relevant organisation not identified (*i.e.* not received by the competent organisation and the receiving organisation could not identified a competent organisation)
21. Concluded: refused on grounds that information was not-available
22. Concluded: denied on grounds of confidentiality or secrecy
23. Concluded: terminated on grounds that applicant did not correct request in step 5 above
24. Concluded: referred (*i.e.* request was referred to the competent organisation to answer)

Another key challenge to the effective functioning of the ombudsman units are: *i)* a lack of understanding among decision makers and public managers of how the ombudsman function can interface with and support their business processes; *ii)* a lack of specific rules and powers regulating the ombudsman function; and *iii)* inadequate funding and support allowing ombudsman units to effectively perform their functions. Moreover, in many areas, the scope of the federal ombudsman is limited. Many requests raised by citizens cannot be solved at the federal level and need to be processed by sub-national public organisations. For example, the Ombudsman for the Brazilian Institute of the Environment and Natural Renewable Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*, IBAMA) has offices in every major Brazilian city (47 in total). To support its function, the IBAMA Ombudsman partners with states and municipalities to create their own ombudsman unit and to develop capacity to support this function and expedite responses to citizen's issues.

Box 2.5. **Brazil's National Electricity Agency Ombudsman**

The legislation establishing the National Electricity Agency (Agência Nacional de Energia Elétrica) creates a National Electricity Agency Ombudsman responsible for ensuring quality in electric power services. The National Electricity Agency Ombudsman receives reports and resolves complaints from concessionaires and citizens, offering an alternative way to resolve conflicts in an expeditious manner. The information gathered is used to: *i)* identify gaps and improve existing regulations; *ii)* inform the agency's supervision actions; *iii)* improve client/concessionaire relationship management; *iv)* improve concessionaire's services; and *v)* address other problems that may arise.

Federal Decree no. 2 335/1997 states that the Ombudsman function is headed by one of the four Directors of the National Electricity Agency. Directors are selected by the President of the Republic for a four year term. There are 23 officials working in National Electricity Agency Ombudsman and a further 145 outsourced professionals to receive citizens' reports.

Concessionaires and citizens are encouraged to contact their power companies and then the regulatory agencies in their state, or that of the Federal District, in order to request services and make complaints. If no answer is received within a reasonable length of time, or they have not been adequately treated or the answer is not satisfactory, the National Electricity Agency Ombudsman and the Administrative Mediation Superintendence receive consumer complaints through a toll-free (0800) number. Reports to the National Electricity Agency Ombudsman are recorded according to the nature of the request (*e.g.* suggestions, compliments and criticisms).

The Ombudsman is supported by: *i)* Customer-Service Call Centre; *ii)* Operational Support Group; *iii)* Technical Support Group; *iv)* computerised system to manage requests addressed to the Ombudsman's Office; and *v)* National Electrical Sector Ombudsman Network.

The Customer-Service Call Centre provides citizens with information and guidance while, at the same time, registering consumers' complaints about concessionaires. The Operational Support Group is in charge of receiving, analysing and referring requests to the Ombudsman's office received through the Call Centre (requests for information, complaints, suggestions and criticism) and by mail, fax or e-mail to the competent areas. The Technical Support Group is in charge of analysing cases that, due to their complexity, require greater technical knowledge. It is also in charge of identifying possible actions by the agency or agents that should be proposed by the Ombudsman's Office to correct internal procedures or those of the agents regulated by National Electricity Agency.

A computerised system is used to manage all requests addressed to the Ombudsman's Office. It can be accessed directly via the Internet by people involved in these requests, such as concessionaires, licensed state agencies, and National Electricity Agency superintendents. It also allows consumers to directly monitor their own cases. The National Electrical Sector Ombudsman Network connects all phone calls of state agencies with the National Electricity Agency call centre, providing high-quality service by means of standard answers.

Saravia (2006) reports that between 2000 and 2005 the number of complaints received from the National Electricity Agency Ombudsman decreased from 58.2% to 4% of the total number of reports. This was attributed in part to customers learning to address their complaints to local concessionaires. Since then, the number of complaints has increased slightly to around 6% as a share of the total number of reports received by the National Electricity Agency.

Box 2.5. **Brazil's National Electricity Agency Ombudsman** *(cont'd)*

Number of reports received by National Electricity Agency Ombudsman

	2005	2006	2007	2008	2009
Requests for information	596 863	613 199	731 459	725 137	579 287
Complaints	25 055	25 602	31 335	38 805	40 155
Suggestions, complements, others	3 603	1 987	2 161	2 206	1 800
Total	625 521	640 788	764 955	766 148	621 242

Source: Saravia (2006), "The Ombudsman System of Brazilian Regulatory Agencies", paper presented to the XI Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administración Pública, Ciudad de Guatemala, 7-10 November.

Discussions on a freedom of information law continue in the National Congress, while the federal government prepares for its implementation

Brazil has yet to establish an overarching freedom of information law and access to information is weak, particularly at the sub-national level.[22] At present, various pieces of primary and secondary legislation define the rights of citizens to request information from the public administration and identify information that cannot be disclosed. For example, Federal Law no. 8 159/1991 defining the National Policy for Public Archives establishes citizens' right to receive information contained in administrative documents, except those considered vital to national security or that violate the privacy of an individual. It also establishes the National Council on Archives (*Conselho Nacional de Arquivo*) under the National Archives to formulate a national archives policy. Federal Law no. 9 784/1999 regarding administrative procedures establishes the right of citizens to access and obtain copies of documents containing administrative decisions in which they have a proven interest. Federal Decree no. 4 553/2002 establishes rules for safeguarding information, documents and other materials considered sensitive to the security of the society and the state. More recently, Federal Law no. 11 111/2005 defines the exceptional circumstance for extending the classification of secrecy of a federal public act and establishes the Commission for Investigation and Analysis of Confidential Information (*Comissão de Averiguação e Análise de Informações Sigilosas*), within the Civil House of the Office of the President of the Republic to do so.

A Freedom of Information Bill (no. 41/2010) is currently under discussion within Brazil's Federal Senate; it was approved by the Chamber of Deputies in April 2010. This bill replaced an earlier proposal submitted by President Lula in May 2009 and its revisions which benefited from a 2005 study by the Council on Public Transparency and Combating Corruption. The bill, as it currently stands before the Federal Senate, is broad in scope. It covers all three branches of government (the executive – including both the direct and the indirect public administration – legislative and judiciary) at federal, state and local levels. In addition, all private not-for-profit organisations receiving public funds from the budget or through social programmes, partnerships, etc. will be subject to the freedom of information requirements in connection with those funds. Freedom of information legislation is recognised as a key component of good governance. In this regard, the 2004 United Nations Convention Against Corruption urges all governments take necessary measures to enhance transparency in the public administration, including with regard to its organisation, functioning and decision-making processes, where appropriate.[23] Freedom of information legislation exists in all OECD member countries. This figure increased from only 3 (out of 20) OECD member countries in 1961, to 7 (out of 22) in 1970, 13 and 19 (out of 24) in 1980 and 1990 respectively, 24 (out of 28) in 2000 and 33 (out of 33) in 2010.

In finalising a Brazilian freedom of information law, attention could focus on a number of principles. Foremost, a modern freedom of information law should include the principle of maximum disclosure both in terms of the information and organisations covered and the individuals who may request information. Public organisations should also be obliged to proactively publish and disseminate key categories of information, even in the absence of a request. These same public organisations should actively inform citizens of their right to information, and promote a culture of openness within government, including training public officials in freedom of information requirements and the necessary record-keeping protocols. Where exceptions do exist, they should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests. Excessively broad or open regime of exceptions undermine otherwise very effective freedom of information laws; excessively narrow exemptions may go against the public interest (*e.g.* national security, public safety, etc.). Requests for information should be processed rapidly and fairly, and an independent review of any refusals should be available. Citizens should also not be deterred from making requests for information by excessive costs.

Concern is often raised that freedom of information legislation is passed without sufficient attention to implementation. This concern applies equally to countries that have a long history of freedom of information. For example, in the last decade there have been a number of audits of the implementation of freedom of information in Australia at both the Commonwealth and state levels. Other common challenges in countries such as Australia, Canada and the United Kingdom include: *i)* differences in the application of public interest tests and misuse of exemptions between public organisations; *ii)* difficulties in coping with significant freedom of information workloads and backlogs in responding to requests for information; *iii)* poor record keeping of administrative documents; *iv)* a lack of understanding by public managers of the need to create a culture of proactive provision of information that is not confidential; *v)* inconsistencies or over complexity in charging for information between public organisations; and *vi)* an absence of monitoring of application of freedom of information laws across public organisations (see Commonwealth Ombudsman, 1999; Australian National Audit Office, 2004;

Solomon et al., 2008; New South Wales Ombudsman, 2009; Government of Western Australia, 2010; Government of Canada, 2002; Worthy, 2010).

In order to implement the proposed freedom of information law, the Office of the Comptroller General of the Union has established a USD 6 million project with the United Nations Education, Scientific and Cultural Organisation. The partnership was forged with the intent of promoting a culture of wider information access and transparency. It includes plans to create tools to facilitate efficient and effective implementation of the freedom of information law; and to expand the system to states and municipalities (see Table 2.5).

Table 2.5. **Plan of action for implementing Brazil's proposed freedom of information law**

Expected output	Period of implementation
Identify challenges and opportunities for the implementation of the proposed freedom of information law in the federal public administration.	2010
Identify systems and policies adopted by federal public organisations that could help the implementation of Brazil's freedom of information policies.	2010
Develop, implement and validate management systems for the implementation of the Brazilian policy on access to information.	2010
Restructure units responsible for supporting freedom of information and implementing the proposed freedom of information policy in at least two federal public organisations.	2010-12
Implement capacity-building and awareness-raising initiatives for federal public officials who will be responsible for the management, execution and follow-up of the freedom of information policy.	2010-12
Transfer information technology from federal public administration to state and municipal governments in order to implement freedom of information law.	2010-12
Inform Brazilian citizens of their right under a freedom of information law.	2010-11
Empower citizens to monitor the implementation of the freedom of information policy.	2010-11
Automate and evaluate projects of technical capability.	2011-12

Source: CGU and UNESCO (*Controladoria-Geral da União* and United Nations Educational, Scientific and Cultural Organisation) (2010), "Política Brasileira de Acesso a Informações Públicas: Garantia Democrática do Direito a Informação, Transparência e Participação Cidadã" [Brazilian Policy for Access to Public Information: Guarantee Democratic Rights to Information, Transparency and Citizen Participation], Brasília.

The federal government of Brazil may benefit from consideration of the following three proposals for action. First, it is necessary to ensure an adequate transition period within the freedom of information bill. At present, Brazil's Freedom of Information Bill includes a six-month transition period. Recent experiences in Mexico and Chile have found that even a transition period of up to one year can prove insufficient. The experiences of Canada and South Africa highlight that a phased implementation can be beneficial. In Canada, documents less than 2 years old were made available within the first year, documents less than 15 years old were made available during the second year and all other documents were made available within the third year of the implementation of the law. In South Africa, the response time for public organisations to address citizens' requests for information was gradually reduced from 90 days before March 2002, 60 days before March 2003 and 30 days thereafter. The federal government of Brazil may consider, for example, introducing a phased implementation by level and size of government to allow capacity to be established and lessons learnt to be applied. Such a phased implementation has already been used for obligations for local governments to provide information electronically on budget execution (see Complementary Law no. 131/2009 amending Complementary Law no. 101/2000, "Fiscal Responsibility Law"). This law, for example, gives 3 deadlines for the phased implementation of

increased budget transparency requirements: 1 year for states, the Federal District and municipalities with over 100 000 inhabitants; 2 years for the municipalities with 50 000-100 000 inhabitants; and 4 years for municipalities with less than 50 000 inhabitants.

Second, the federal government could benefit from ensuring that adequate resources are allocated to prepare guidance materials for federal public organisations to consider when formulating their own policies and operating procedures with regard to freedom of information. Guidance material may address protocols and procedures for informing citizens of their rights, the application of fees for citizens requesting information, as well as the collection of data and benchmarks to review the implementation of freedom of information requirements. The Office of the Comptroller General of the Union has already begun preparation of a project together with the United Nations Educational, Scientific and Cultural Organisation focusing on preparing the federal public administration for the implementation of a law. These activities are scheduled to happen over 2011 and 2012. Third, the federal government could consider immediately introducing records and archives management into internal audit activities as a means of ensuring that public organisations are preparing for freedom of information. This may be done through the programme (performance) audits of organisations of the direct public administration by the Secretariat of Federal Internal Control. The Secretariat of Federal Internal Control could require this to be included in the Annual Plan of Internal Audit Activities of the audit units within organisations of the indirect federal public administration. The Secretariat of Federal Internal Control sets guidelines and approves the Annual Plan of Internal Audit Activities of the audit units within organisations of the indirect federal public administration.

In monitoring the administration of freedom of information laws, governments typically collect data to answer five questions: how many freedom of information requests are there? How many freedom of information requests are granted? How many freedom of information requests are refused, and for what reasons? How many freedom of information refusals are taken to appeal? How many freedom of information appeals are successful? However, there are real difficulties in comparing the figures between countries. There are differences of jurisdictional and geographical coverage; there are differences in the type of appeals system (whether using a commissioner, an ombudsman or tribunal) and how the ministerial veto can be deployed; there are differences in the number of organisations subject to freedom of information; and the legislation operates in very different contexts (Hazell and Worthy, 2010). In addition, periodic reviews of the administration of freedom of information legislation may be conducted either by an ombudsman (*e.g.* Commonwealth Ombudsman, 1999; Government of Canada, 2002; Government of Western Australia, 2010), the supreme audit institution (*e.g.* Australian National Audit Office, 2004; Government Accountability Office, 2007) or an independent panel (*e.g.* Solomon et al., 2008). Undertaking an assessment can maximise organisational or government learning. Doing so does not preclude the involvement of external stakeholders, which can take different forms including provision of information, formal consultation, use of advisory groups and freedom of information feedback surveys. Internal assessment may also be complemented by external assessments by academics, journalists, etc. (*e.g.* Coalition of Journalists for Open Government, 2008; Canadian Newspaper Association, 2009; Hazell and Worthy, 2010).

Table 2.6. **Promulgation of freedom of information legislation in select countries**

Country	Law/year	Transition period
United States	Freedom of Information Act 1966[1]	6 months
France	Act No. 78-753/1978. On various measures for improved relations between the civil service and the public and on various arrangements of administrative, social and fiscal nature	N/A
Netherlands	Act on Public Access to Information 1978. Replaced by Government Information (Public Access) Act 1991	N/A
Australia	Freedom of Information Act 1982[2]	Immediate
Canada	Access to Information Act 1982	Phased[3]
Spain	Law no. 30/1992 on Public Administration and Common Administrative Procedures[4]	N/A
Portugal	Law no. 65/1993	N/A
Korea	Act on Disclosure of Information by Public Agencies 1996	2 years
Japan	Law Concerning Access to Information Held by Administrative Organs 1999	2 years
United Kingdom	Freedom of Information Act 2000[5]	5 years
South Africa	Promotion of Access to Information Act 2001	Phased[6]
Mexico	Federal Law of Transparency and Access to Public Government Information 2002 (effective from 2003)	1 year
Germany	Freedom of Information Act 2005[7]	6 months
Chile	Access to Public Information 2008 (effective from 2009)	8 months

Notes:

1. United States: subsequently amended in 1996 by Electronic Freedom of Information Act.

2. Australia: Australian Capital Territory, the Freedom of Information Act 1989; New South Wales, the Government Information (Public Access) Act 2009 (effective from 1 July 2010); Northern Territory, the Information Act 2003; Queensland, the Freedom of Information Act 1992; South Australia, the Freedom of Information Act 1991; Tasmania, the Right to Information Act 2009 (effective from 1 July 2010); Victoria, the Freedom of Information Act 1982; Western Australia, the Freedom of Information Act 1992.

3. Canada: documents less than 5 years old made available within the first year, documents less than 15 years old made available during the second year and all other documents made available within the third year of implementing of the law.

4. Spain: subsequently amended by Law no. 29/1998.

5. United Kingdom: with the exception of Scottish bodies, which are covered by the Freedom of Information (Scotland) Act 2002.

6. South Africa: the response time for public organisations to address citizens' requests for information was gradually reduced from 90 days before March 2002, to 60 days before March 2003 and to 30 days thereafter.

7. Germany: 9 of 16 federal states have established their own freedom of information laws: Berlin, Brandenburg, Nordrhein-Westfalen, Schleswig-Holstein, Hamburg, Bremen, Mecklenburg-Vorpommern, Saarland and Thüringen.

Citizen engagement in oversight and direct social control

There are a number of examples of the vitality of Brazil's citizens and their voices shaping policy in the country's recent history. For example, the Direct Elections Now Movement (*Movimento Direitas Já*) influenced the drafting of the 1988 Federal Constitution providing for direct election of the President of the Republic. The Sanitary Movement (*Movimento Sanitarista*) influenced the creation of Brazil's universal health system and the decentralisation of health care management to the states and municipalities. The Painted Faces Movement (*Movimento dos Caras Pintadas*) prompted the impeachment of President Collor de Mello in 1992 following allegations of corruption. The "popular initiative" (*iniciativa popular*) established within the 1988 Federal Constitution led to the creation of federal laws to address electoral

corruption in 1999 and preventing candidates who have been convicted of any one of a range of crimes from running for public office in 2010, among other measures. This part examines efforts to: *i)* mainstream citizen engagement through participatory councils and conferences; *ii)* overcome barriers to, and increase the appeal of, direct social control; and *iii)* create a sound legal and institutional framework for enhancing transparency and integrity in lobbying.

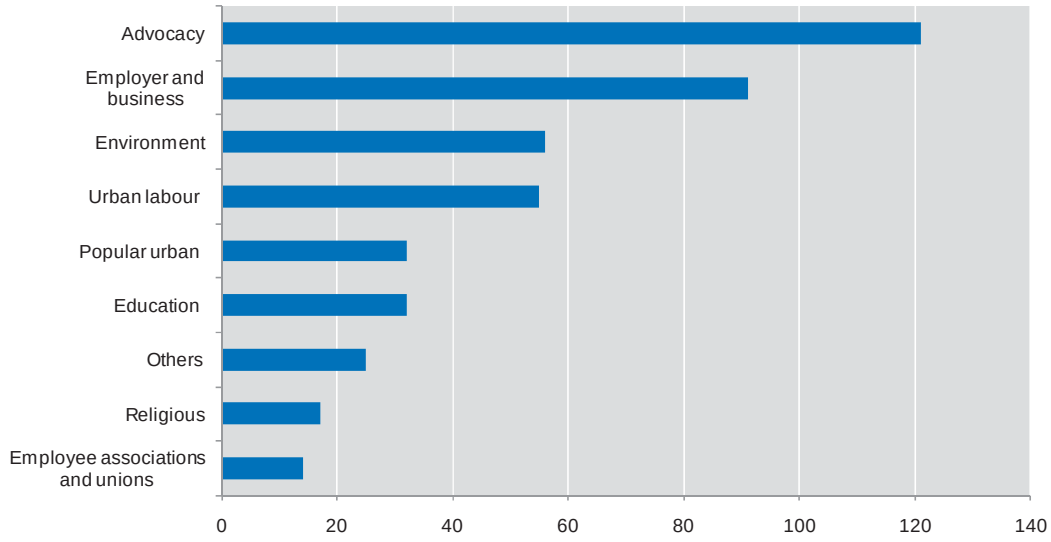
Efforts have been undertaken to mainstream citizen engagement through participatory councils and conferences at all levels of government

At the federal level, councils focus on the formulation and oversight of public policies. Deliberative councils may publish resolutions, recommendations and motions, including mandatory guidelines. Consultative councils provide a forum for dialogue between government and citizens. In October 2010, there were 61 national councils involving 1 752 participants: 785 from the federal government and 957 from non-governmental organisations (see Annex 2.A1). Of these 61 national councils, 19 have been created since 2003. Some councils are established by federal law; others are established by federal decree. For example, the National Council on Education was established by federal law (see Federal Law no. 9 131/1995 amending the Guidelines and Bases of National Education); the National Council on Cultural Policy is established by a federal decree (see Federal Decree no. 5 520/2005 on establishing the Federal Cultural System and the composition and function of the National Council on Cultural Policy). At the municipal level councils are involved in the oversight of the implementation of federal programmes. In 2004, over 28 000 councils were established for health, education and environment alone (Coelho et al., 2005).

The composition of national councils varies considerably and is influenced by the policy sector. All require the participation of civil society organisations. In January 2007, some 440 non-governmental organisations were represented on national councils including advocacy groups (122), employer associations (92) and environmental groups (57), among others (see Figure 2.6). A large number of non-governmental organisations participate on a number of different councils. For example, the Central Workers Union, the National Confederation of Industry and the National Confederation of Family Agriculture Workers each participated in 12 national councils. Participating civil society organisations that did not represents labour were the National Conference of Brazilian Bishops in 7 national councils, the Brazilian Association of Non-Governmental Organisations in 4 national councils and the Ethos Institute for Business and Social Responsibility in 3 national councils (da Silva, 2009). In October 2010, there were 38 national councils with membership comprised of more than 50% by civil society organisations (29 with between 50-74% and 9 with between 75-99%). Of the remainder, 18 are comprised of 25-49% representation from civil society organisations and 5 have 1-24% (da Silva, 2009).

Figure 2.6. **Civil society participation in Brazil's national councils, 2007**

By broad categories of organisations



Source: da Silva, E.R.A. (2009), "Participação Social e as Conferências Nacionais de Políticas Públicas: Reflexões Sobre os Avanços e Desafios No Período de 2003-06" [Social Participation and National Conferences on Public Policy: Thoughts on Progress and Challenges in the Period of 2003-06], *Texto para Discussão 1378*, Instituto de Pesquisa Econômica Aplicada, Rio de Janeiro.

Example of a national council: the Council on Public Transparency and Combating Corruption

The Council on Public Transparency and Combating Corruption was established in 2003 and serves as a consultative body to the Office of the Comptroller General of the Union. Its purpose is to debate and recommend measures for controlling public resources, promoting transparency and combating corruption within the federal public administration. This includes contributing to: *i)* the formulation of policies, guidelines and projects; *ii)* suggesting improvements and integration of internal procedures; and *iii)* conducting studies and establishing strategies to substantiate legislative and administrative proposals in order to combat corruption and mobilise organised civil society. Box 2.6 provides an overview of the composition and functioning of the Council. Examples of issues discussed by the Council on Public Transparency and Combating Corruption to date include:

- **Internal control:** in 2005, the Council discussed a proposal to amend Secretariat of the National Treasury Instruction no. 1/1997 concerning administrative and transfer agreements. The proposal was tabled by the Federal Court of Accounts representative to the council and followed earlier efforts by the Office of the Comptroller General of the Union to strengthen control over the use of the agreements. The recommendations generated within the council were compiled and used by the Office of the Comptroller General of the Union, the Secretariat of the National Treasury and the Ministry of Planning, Budget and Management in order to develop new management controls for administrative agreements. (See Federal Decree no. 6 170/2007 regarding the rules on the transfer of federal funds using administrative and transfer agreements).

Box 2.6. **Brazil's Council on Public Transparency and Combating Corruption: composition and functioning**

The council is chaired by the Minister of Control and Transparency and consists of 20 members representing the federal public administration and citizens. Members of the council are appointed by the president of the council. Representatives of federal government agencies are nominated by the highest authority of each agency. Representatives of non-governmental organisations serve two-year terms, with the possibility of reappointment. In addition, the chair of the council may specially invite representatives of public, private and civil society organisations and individuals to attend meetings where agenda items correspond with their respective areas of expertise. Participation in the council is considered a public service and is not remunerated.

The council meets every two months and can hold extraordinary meetings called by the chair. Within the council voting is decided by a simple majority with a minimum quorum of ten members. Decisions of the plenary are binding, but may be altered, amended or repealed through a plenary. The council may establish working groups on a temporary basis, and can propose the adoption of specific measures. The Office of the Comptroller General of the Union's Executive Secretariat serves as the executive secretariat of the council, providing administrative and technical support.

Composition of Brazil's Council on Public Transparency and Combating Corruption

Group	Members of Council on Public Transparency and Combating Corruption
Federal public administration	Minister for Transparency and Control (Chair)
	Representative from the Civil House of the Office of the President of the Republic
	Representative from the Office of the Attorney General
	Representative from the Federal Ministry of Justice
	Representative from the Federal Ministry of Finance
	Representative from the Federal Ministry of Planning, Budget and Management
	Representative from the Federal Ministry of Foreign Affairs
	Representative from the Public Ethics Commission
Independent public authorities	Representative from the Office of the Federal Public Prosecutor
	Representative from the Federal Court of Accounts
Citizens	Representative from the Brazilian Bar Association
	Representative from the Brazilian Press Association
	Representative from Transparência Brasil
	Representative from the Brazilian Association of Non-governmental Organisations
	Representative from the National Conference of Bishops of Brazil
	Representative designated by national evangelical churches organised according to their conventions, general councils or synods
	Representative from the General Workers' Confederation
	Representative from the National Trade Confederation
	Renowned Brazilian citizen for his actions in the areas of the Council activities
	Ethos Institute of Business and Social Responsibility

- **Standards of conduct:** in 2005, the Office of the Comptroller General of the Union submitted a proposal to define conflict of interest within the federal public administration. A working group was constituted to make suggestions to clarify the definition of conflict of interest, to redefine the "cooling off" period and to strengthen the channels available to public officials to seek guidance on conflict of interest. The recommendations generated within the council were compiled and used by the Office of the Comptroller General of the Union in order to formulate

a draft bill regarding conflict of interest. The draft bill was sent to the Civil House of the Office of the President of the Republic, where it was refined and submitted for public consultation. In October 2006, the bill was sent to the National Congress, where it is currently being discussed (see Bill no. 7 528/2005).

- **Transparency:** in 2005, the representative from Transparência Brasil suggested that the council should further examine the issue of freedom of information as the existing bill on freedom of information under discussion with the National Congress was narrow in scope. A number of weaknesses in the original bill included, among other things, no explicit reference to active transparency, no changes to the classification system of public documents and no complete system of appeals. With the agreement of the members of the council, the Office of the Comptroller General of the Union's Legal Department prepared a preliminary study on the subject. The council prepared a draft bill regarding freedom of information as input for the Office of the Comptroller General of the Union to use in discussions with the Civil House of the Office of the President of the Republic. Once in the Civil House, the draft bill was discussed together with other federal ministries (*e.g.* Federal Ministry of Defence, Federal Ministry of Foreign Affairs, etc.) before being finalised. In May 2009 the draft bill was sent to the National Congress, where it is currently being discussed.

There is no obligation for a specific subject to be discussed by the Council on Public Transparency and Combating Corruption. For example, the proposal to revise the Secretariat of the National Treasury Instruction regarding the rules on the transfer of federal funds using administrative and transfer agreements may have been addressed internally within the federal government. It could have been done using internal channels. However, because the issue was considered of particular concern to the members of the council, its revision was brought to discussion by request of council members. Any council member may table an issue for discussion. It may only be removed from the agenda by the council president if a relevant new fact emerges, a request for examination is made by a council member to research the subject, in which case it will have priority on the council's next agenda.

While councils oversee the implementation of federal policies and programmes, data concerning their impact is limited

A recent study on the functioning of the municipal health councils provides an indication of some challenges: managing wide participation of interested stakeholders could mean overcrowding and difficulties to ensure that voices are effectively channelled into policy proposals (see Box 2.7). Conversely, limited resources and capacities (especially for small municipalities) reduce incentives for municipalities to set up such consultative forums. Monitoring and evaluation of the experiences of these councils could be supported by the Secretariat of National Social Interaction with a view of better understanding what works and what does not, through guidance and common frameworks (*e.g.* consultation guidelines, requirements, code of conduct, *ad hoc* training) and disseminating good practices.

Box 2.7. **Brazil's participatory councils: empirical evidence from 5 500 municipal health councils**

Moreira and Escorel (2009) examine the functioning of the municipal health councils using 18 variables to measure autonomy, organisation and access.

- "Autonomy" refers to the capacity of councils to function independently of the municipal executive, measuring the more structural aspects of autonomy, *e.g.* physical location, equipment, human and financial resources;
- "Organisation" refers to the existence of internal bodies and to the performance of qualification and meetings; and
- "Access" refers to the possibility for all councillors to run for the position of council president and for the population to take part in the daily life of the councils.

Drawing upon a 2007 survey answered by 5 463 (98% of total) municipal health councils, their analysis shows that municipal health councils are constrained with respect to autonomy and organisation. Most of these councils had been operational for more than a decade: 4 190 (77%) of those surveyed were established between 1991 and 1997 and a further 312 (6%) before 1991. Since 1997, a further 785 councils (14%) have been established, reflecting the establishment of new municipalities.

In terms of autonomy: only 265 (5%) councils studied have their own budget, and these are only found in municipalities of more than 2 million inhabitants; 940 (17%) have their own administrative support teams and are only found in municipalities with more than 500 000 inhabitants; and 906 (17%) have their own physical structure (*i.e.* headquarters).

In terms of organisation, 90% of councils did not participate in training in 2004 and permanent secretariats were absent in 89% of the councils, as it was considered to negatively affect the performance of councils in all sizes of towns. Two organisational variables are positive, including among different population sizes: 82% of councils have monthly meetings and 66% of councils had not cancelled meetings during the 12 months preceding the research for a lack of quorum.

For its part, the dimension "access" presents the best results; more than 70% of the councils elect their presidents and, when they hold their meetings, directly give voice to any citizen who wishes to participate. Only the president's segment has a result that is considered negative, for only in towns with between 1 and 2 million inhabitants are the managers not the presidents of the councils.

The two variables in which the councils have the best performance make up this dimension: "population with a right to a voice at meetings", with the least positive result reaching 75%, and "meetings open to the population", which is the best of all, starting from a minimum level of 83% and reaching 100% for the 2 largest population sizes.

Source: Moreira, R.M. and S. Escorel (2009), "Municipal Health Councils of Brazil: A Debate on the Democratisation of Health in the Twenty Years of the UHS", *Ciência & Saúde Coletiva*, 14(3): 795-805.

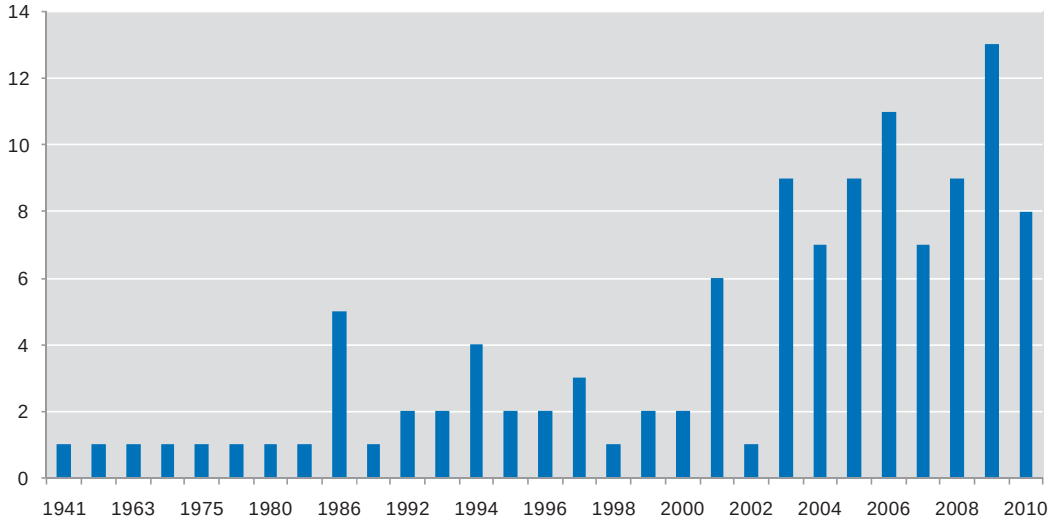
National conferences engage citizens in evaluating and establishing guidelines to foster policy and programme improvement

Whereas the national and municipal councils oversee the implementation of federal policies and programmes, national conferences focus more on evaluation and establish guidelines to foster continual improvement. National conferences are not a recent development in Brazil; the first National Health Conference was held in 1941.

Since 1988, conferences have become increasingly deliberative in nature rather than just consultative. Moreover, the types of policies and programmes addressed by national conferences have become broader than health, social welfare and human rights (which were outlined in the 1988 Federal Constitution). Between 1988 and 2009 national conferences were held in relation to 33 public policies areas. National conferences are preceded by municipal/regional and state conferences, and are, generally, organised by federal ministries responsible for implementing the public policies and the respective policy councils. The results of municipal/regional and state conferences inform national conferences, in the sense that they provide inputs from what was debated locally and regionally. On municipal/regional level people directly involved with the services are heard, civil society is heard, local councils appoint delegates for national conferences.

Figure 2.7. **National conferences in Brazil**

Number of conferences per year



Source: Secretariat of National Social Interaction, Office of the President of the Republic.

National conferences in Brazil are categorised as either consultative or deliberative (*i.e.* decisions of the conferences must be followed and implemented by government legislative amendments). A study of participation in 34 national conferences between 2003 and 2006 found that 68% were consultative and 32% were deliberative. These 34 national conferences involved more than 43 500 persons, or an average of 1 450 persons per conference – but have ranged up to approximately 3 000 persons at the 1st National Conference on Policies for Women and the 12th National Conference on Health. As national conferences are preceded by sub-national conferences focusing on the same subject the actual number could be said to be significantly higher. In relation to the composition of national conferences, 55% of participants are representatives of citizens, 37% are representatives of governments and 8% are observers, members of the National Congress or international organisations. The majority (88%) of participants may be elected through sub-national conferences focusing on the same subject, with the remainder (12%) participating because of their position within and out of government. A total of 8 047 decisions were made at national conferences between 2003 and 2006, or an average of 270 decisions per conference. Of these decisions, 45% were to be

implemented by a single federal ministry and 55% by 2 or more federal ministries (da Silva, 2009).

Pogrebinschi and Santos (2010) examine the issues deliberated by civil society in dozens of national conferences held between 1988 and 2009. They find that national conferences have shaped approximately 20% (2 629 out of 13 245) of complementary and ordinary laws. Of the 369 constitutional amendment bills currently under deliberation within the National Congress, 179 (49%) are propositions arising from national conferences. Moreover, 566 (4% of total) bills and 46 (13%) constitutional amendment bills explicitly mention the final reports of the conferences. For example, the Unified System of Social Welfare (*Sistema Único de Assistência Social*) was created as a direct result of the 4th National Conference on Social Welfare in 2003. The National Cultural Plan was included in the 1988 Federal Constitution in 2005 as a direct result of the 1st National Culture Conference. The 13th National Health Conference (*Conferência Nacional de Saúde*) in 2007 led to the approval of the National Health Plan 2008/2009-11 (*Plano Nacional de Saúde 2008/2009-11*) establishing the objectives and benchmarks to be achieved and overall practices for the Federal Ministry of Health.

There are no common institutionalised procedures to monitor and evaluate the outcomes of the conferences across policy sectors over time

Standardisation of procedures would ensure that the selection process is transparent and that all major public interests are represented in the conferences. There are some significant experiences and learning from OECD member countries in establishing guidelines and codes of conduct for consultation. For example, the Netherlands' Code of Conduct for Professional Consultation sets ten principles regarding standard of behaviour, accountability, organisation of the consultation process and communication. Established in 2006, the code is intended for officials wishing to launch consultation processes. In Canada, procedural requirements for consultation have been mainstreamed since 1998 through the Consultation Directive for Memoranda to Cabinet. These directives include requirements for a summary for consultation with key stakeholders, and the process used. The United Kingdom has introduced Codes of Practice on Involvement to help government involve citizens in the preparation of draft laws and policy documents. The United Kingdom Code of Practice on Written Consultation is legally binding.

The federal government is investing in training to overcome barriers to, and increase the appeal of, direct social control

Governments in many OECD member countries are seeking to raise the effectiveness of their efforts to engage citizens. In September 2003, the Office of the Comptroller General of the Union started a training programme targeting local public officials, municipal councillors and local leaders. The "Eagle Eye on the Public Money Programme" (*Programa Olho Vivo no Dinheiro Público*) responded to deficiencies and irregularities detected in the management of federal funds by states and municipalities by the Office of the Comptroller General of the Union random audits in 2003 (see Chapter 3). Faced with its own capacity constraints, however, the Office of the Comptroller General of the Union selected a non-governmental organisation known for its capacity-building expertise to implement the programme. The partnership facilitated the transfer of know-how from the non-governmental organisation to Office of the Comptroller General of the Union officials (Souza Santana, 2009). Pilot events were

organised across the country, targeting 10 municipalities per event, and each event training 60 local public officials, 60 councillors and 30 local leaders.

The programme was institutionalised in 2004, and includes technical areas such as planning and budgeting, procurement and administrative contracts, asset management. The current programme includes a series of activities to raise awareness and provide guidance to the members of councils, non-governmental organisations and citizens on the critical role of public oversight and direct social control. These activities include: *i) in loco* training and workshops; *ii)* distance training courses and online forums; *iii)* publications for municipalities; and *iv)* citizen awareness-raising activities.

Box 2.8. **Developing professional standards for citizen engagement: the experience of the Netherlands**

Important steps have been taken to formulate and evaluate a professional standard for citizen engagement. Professionalism and made-to-measure processes create an ongoing process of implementation, knowledge gathering, evaluation and adjustment. The aim is not to reach "perfection" in citizen engagement, but to establish professional standards for these processes. Such standards are dynamic, never "finished" and demand constant attention.

In 2006, the government of the Netherlands began a move to reorganise, professionalise and measure citizen engagement. The intention was to make engagement more effective, support good decision making and improve trust in the process. The professionalisation consists of a Code of Conduct with "principles of good consultation" and an inter-departmental organisation (*Inspraakpunt*) that can support public officials. Support is offered to public officials through a platform for knowledge exchange and a regular benchmark of the quality and effectiveness of citizen engagement.

The Code of Conduct states:

- Determine who has final responsibility and commit this person or organisation to the process.
- Build a process plan in advance and make it public. Transparency of the rules of the game makes the process transparent for everyone and provides clarity about expectations.
- Know and mobilise all stakeholders. Every question demands a specific target group and poses specific demands for the recruitment and selection of participants.
- Organise knowledge. Learn from others and open knowledge to others. Evaluate every engagement process.
- Be a reliable interlocutor.
- Communicate clearly, at the right moment and with up-to-date information.
- Be clear about different roles and about what will be done and what results are expected.
- Account for what has been done. Appropriate feedback of results and decisions shows respect for the input of those involved.
- Do not consult for the sake of consultation. Do not involve citizens for legitimacy of the decision. Consultation is only meaningful if it can contribute to the quality of the decision making.

Box 2.8. **Developing professional standards for citizen engagement: the experience of the Netherlands** *(cont'd)*

In 2008, the government of the Netherlands conducted an empirical evaluation of the impact of professionalism on citizen engagement. It drew upon 36 examples of citizen engagement. The results showed that:

- The more the standards for professionalism are met, the higher the scores of subjective and objective effects. This is particularly true where pre-conditions are favourable. If policy options are limited, or commitment from the political level is low, the effect of professionalism is considerably lower. Good communication leads to greater impact. Participants are more satisfied with the process and the results if there is clear communication about the influence of participants and if the results are clearly demonstrated. Support from the community for the decision finally taken will, in general, be greater.
- If project leaders ensure that the process is made-to-measure to the problem at hand, all those involved are more satisfied with the results. Support from society for solutions will be greater, in accordance with the extent to which the process is made-to-measure.
- Of all pre-conditions, political commitment particularly stands out. Impact is generally greater in processes where responsible politicians are supportive of citizen engagement. This is equally true if these politicians are visible to participants during the process and operate as a unit to the outside world.

Source: van der Wal, H., I. Pröpper and J. de Jong (2009), "Developing Professional Standards for Citizen Engagement, the Netherlands", in OECD (2009), *Focus on Citizens: Public Engagement for Better Policy and Services*, OECD Publishing, Paris, doi: 10.1787/9789264048874-21-en..

In loco training and workshops address issues such as citizenship, the public administration and citizen oversight. The content of the workshops and material is constantly adapted to the context of the municipalities. Workshops are often held in urban municipal areas and last for about 1 week, with an average attendance of between 120-140 people, including public officials, municipal councillors and local leaders from 15-20 different municipalities. Workshops can also focus on a single municipality. There are also incentives for complementary and follow-up activities, such as lectures, seminars and trade fairs. Complementary and follow-up activities are performed on an *ad hoc* basis, depending on the opportunity and convenience of the organisations and individuals involved. They can be based on the initiative of the Office of the Comptroller General of the Union, municipalities or partnerships with other organisations. Activities are free of charge, though the municipal governments provide access to venues for the training.

Table 2.7. **Participation in Brazil's Eagle Eye on the Public Money Programme**

	2004	2005	2006	2007	2008	2009	2010
Number of actions	3	10	33	52	26	50	44
Participating municipalities	12	79	259	444	224	364	376
Local officials	56	548	1 513	2 199	1 072	1 788	1 362
City counsellors	179	459	1 449	2 041	1 038	3 139	2 763
Citizens	77	586	1 481	2 608	1 250	2 650	719
Citizens in complementary activities*	0	704	2 156	3 737	797	1 315	918

Note: *Ad hoc* initiatives performed depending on the opportunity and convenience for the Office of the Comptroller General of the Union, municipalities or other partners.

Source: Secretariat of Corruption Prevention and Strategic Information, Office of the Comptroller General of the Union.

Remote training activities are conducted through the Office of the Comptroller General of the Union virtual school (*escola virtual*). It includes online courses with tutoring, a discussion forum and educational videos. Two courses have been conducted in partnership with other public organisations. Between 2007 and 2009, the Office of the Comptroller General of the Union developed courses regarding "Public Oversight and Citizenship" and "Public Oversight of the Basic Education Fund and Enhancement of Professional Education" with the National School of Finance Administration (*Escola de Administração Fazendária*); "Citizen Oversight and Citizenship" with the National School of Finance Administration and "Attending Citizens", "Ethics in the Public Service" and "Public Budgeting" with the National School of Public Administration (*Escola Nacional de Administração Pública*). The Office of the Comptroller General of the Union and the Brazilian Legislative Institute have developed videos on public budgeting and public procurement for citizens and public managers on various websites. In addition, the online Eagle Eye chat room promotes discussions regarding prevention of corruption and citizens' participation. Through this forum citizens are periodically invited to take part in discussions with public administration experts on a range of matters related to direct social control.

With a view to enable the dissemination of knowledge, the Office of the Comptroller General of the Union develops and distributes educational materials, including books, pamphlets and folders. The materials are distributed at capacity-building sessions and made available for download on the Internet. Five books have been developed to date in order to guide citizens to oversee federal public policies. These focus on citizen oversight, oversight of the Fund for the Development of Basic Education and Enhancement of Professional Education, Agrarian Development Programmes, the Family Grant Programme, and "A Guide for Citizens' Rights on Public Oversight".

Within the scope of Eagle Eye on the Public Money Programme specific activities target teachers and students through presentations, distribution of video materials and competitions. Since 2007, the Office of the Comptroller General of the Union has held an essay and drawing competition for primary and secondary school students. These have focused on themes such as "What you have to do with corruption?" (in 2008; in partnership with the National Association of Members of the Public Prosecutors' Office) and "All for ethics and citizenship: how can I contribute to a better society?" (in 2009 in partnership with the National Programme of Taxpayer Education). Between 2007 and 2009 approximately 685 000 students and 22 000 teachers participated in these activities (see Table 2.8.).

Table 2.8. **Participants in Brazil's Office of the Comptroller General of the Union student essay and drawing competitions**

Year	2007	2008	2009	2010
Students involved	109 193	361 734	213 645	188 534
Teachers involved	3 824	12 060	5 938	6 042
Schools involved	8 441	2 878	1 318	1 081
Municipalities involved	200	964	619	565
Essays/drawings presented	116 226	254 138	103 884	141 743

Note: Data does not reflect the total number of students involved in the Essay and Drawing Contest in 2007 because of problems faced by some programme partners.

Source: Secretariat of Corruption Prevention and Strategic Information, Office of the Comptroller General of the Union.

One of the main deficiencies of the Eagle Eye on the Public Money Programme is the lack of monitoring and evaluation of its results and impact. This conclusion is shared by Office of the Comptroller General of the Union officials, who emphasise the need to develop a methodology to evaluate the emerging results from the programme. These results are leading to new actions and assessment of any potential flaws. Since the first actions in 2003, no evaluation work has been developed to measure impact. The only mechanism put in place to date is the evaluation questionnaire distributed at the end of each training event, but there is no analysis aimed at assessing whether the programme is achieving its intended goals – a commonly recognised deficiency within the federal public administration.

Most governments in OECD member countries are still only at the early stages of embedding evaluation into their public engagement processes. A 2007 OECD survey of practices in 19 OECD member countries found that 72% of countries evaluate outputs (products and activities), 61% outcomes (benefits and impacts), 44% tools and methods used, 33% inputs (cost and risks) while 11% trade off between inputs and outputs. The majority (83%) of responding countries indicated that evaluation was *ex post*, 72% noted it was during the process and 39% at several stages, but only 17% evaluate *ex ante*. Of these countries, half (50%) indicated that the government units conducting open and inclusive policy-making initiatives were also the ones responsible for their evaluation. Internal or self-evaluation is clearly the main option for the 19 countries who answered this part of the questionnaire. External evaluation was far less frequently cited and included: government units charged with evaluation (10%), private sector firms contracted by government (10%) and parliament (10%). Participatory evaluation clearly plays a very minor role with only a few respondents citing civil society organisations as participants in evaluation (5%) or as independent evaluators (5%).

In the beginning of 2010, the Office of the Comptroller General of the Union established an agreement with the Federal University of Pernambuco, a state in the north east of Brazil, to carry out a project to evaluate general and specific aspects of the programme and improve its impact. The project is structured to achieve six outputs, among them the development of methodology to monitor and evaluate the effectiveness of the programme. Other objectives of the agreement are to train the teams of Office of the Comptroller General of the Union in the states to apply mapping tools and evaluation of the programme, identify and analyse the socio-economic and cultural status of social actors (*i.e.* local councillors, municipal officials and local leaders) in order to evaluate and adopt the strategies, and identify the extent to which the themes debated or studied in

the multiple initiatives of the programme help citizens, municipal counsellors and other stakeholders to oversee government expenditure.

Efforts have begun to create a sound legal and institutional framework for enhancing transparency and integrity in lobbying

Lobbying can improve policy making by providing valuable data and insights. However, a sound framework for transparency and integrity in lobbying is crucial to safeguard the public interest, promote a level playing field and avoid capture by vocal interest groups. Surveys of members of Congress and high public officials within the executive branch in Brazil demonstrate an awareness of the need to establish rules relating to lobbying (see Box 2.9). There are several proposals dealing with lobbying activities at the National Congress. The first bill was presented in 1987. The most recent (Bill no. 1 202) was presented in 2007 by an individual member of Congress with the intention of providing a single regulatory framework for lobbying within the executive and legislative branches at the federal level. Within the executive branch, the issue of lobbying is also under discussion in the Civil House of the Office of the President of the Republic and the Council for Transparency and Combating Corruption. There is no decision whether the federal executive will submit a bill to the National Congress or make proposals to amend the existing bills. The growing attention to regulating lobbying in Brazil reflects recent trends in a number of OECD member countries (*e.g.* Australia, Canada, Chile, France and the United States). However, setting standards and rules for enhancing transparency in lobbying has proved very difficult because it can also become a sensitive political issue. In 2010, OECD member countries approved the "Principles for Transparency and Integrity in Lobbying", which emphasise creating a level playing field (see Box 2.10).

Box 2.9. **Perceptions of lobbying among decision makers in Brazil's federal legislative and executive branches**

dos Santos (2007) questioned 60 members of Congress and 60 high public officials within the federal executive to ascertain their views on lobbying. For approximately 49% of interviewed officials, lobbying was considered part of democracy but needs to be regulated in order to avoid corruption, conflict of interest and abuse. Of these, approximately 82% considered that lobbying regulation must cover all 3 branches of government (*i.e.* the executive, legislative and judiciary). As far as the content of regulation, approximately 72% thought that transparency and control should be the focus. This is compared with approximately 22% who considered that equity in access to decision making should be the main issue of lobbying regulations. Regarding the expected results of a lobbying regulation, the answers revealed a great sense of hope and optimism: approximately 61% believed that a law regulating lobbying would decisively help to reduce corruption and enhance transparency in the relationships among interest groups, politicians and bureaucrats. However, approximately 34% considered that a law would not be effective in tackling the causes of corruption and reaching the most powerful interests.

Source: dos Santos, L.A. (2007), "Percepções dos Políticos e Burocratas Sobre o Lobby e Sua Regulamentação no Brasil" [Perceptions of Politicians and Bureaucrats on Lobbying and its Regulation in Brazil], unpublished paper.

Box 2.10. **OECD Principles for Transparency and Integrity in Lobbying**

The OECD "Principles for Transparency and Integrity in Lobbying" were approved in February 2010. It is the first international policy instrument providing guidance to decision makers on how to promote good governance principles in lobbying. The principles reflect wide consensus from governments and stakeholders on how to address concerns related to lobbying. The OECD completed a world-wide consultation process on the principles in December 2009. The principles are based on evidence and lessons learnt not only from government regulations and legislation, but also from self-regulation of the lobbying industry.

I. Building an effective and fair framework for openness and access

1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.
2. Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.
3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.
4. Countries should clearly define the terms "lobbying" and "lobbyist" when they consider or develop rules and guidelines on lobbying.

II. Enhancing transparency

5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.
6. Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities.

III. Fostering a culture of integrity

7. Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.
8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

IV. Mechanisms for effective implementation, compliance and review

9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.
10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.

Source: OECD (2009), *Lobbyists, Government and Public Trust, Volume 1: Increasing Transparency Through Legislation*, OECD Publishing, Paris, doi: 10.1787/9789264073371-en; OECD (2010), "Towards Smarter and More Transparent Government: e-Government Status", OECD e-Government Project, GOV/PGC/EGOV(2010)3, OECD, Paris.

Conclusions and proposals for action

To date, promoting transparency and citizen engagement within Brazil has been achieved in the absence of comprehensive freedom of information legislation. Brazil is only now moving closer to a comprehensive freedom of information law with a bill under discussion within the National Congress. This bill was presented to the National Congress by the President of the Republic in 2009, replacing earlier proposals that were tabled in early 2000. The Office of the Comptroller General of the Union is also engaging the United Nations Educational, Scientific and Cultural Organisation to support the eventual implementation of a freedom of information law, though information about this partnership was unavailable. In order to support the eventual implementation of a freedom of information law, the federal government of Brazil could consider the following proposals for action:

- Ensure the inclusion of an adequate transition period within the freedom of information bill. The government may consider, for example, phasing in the implementation of a freedom of information law by the level and size of government. This would allow time for local governments to establish the necessary capacity and to learn lessons from the central and other local governments. Such a phased implementation already exists for other transparency policies, for example, obligations for local governments to provide information electronically on budget execution (see Complementary Law no. 131/2009 amending Complementary Law no. 101/2000, "the Fiscal Responsibility Law"). This law, for example, gives 3 deadlines for the phased implementation of requirements for increased budget transparency: 1 year for states, the Federal District and municipalities with over 100 000 inhabitants; 2 years for municipalities with 50 000-100 000 inhabitants; and 4 years for municipalities with less than 50 000 inhabitants.
- Ensure adequate resources are allocated to prepare guidance materials for federal public organisations to consider when formulating their own policies and operating procedures with regard to freedom of information. Guidance material may address *i)* protocols and procedures for informing citizens of their rights; *ii)* the application of fees for citizens requesting information; and *iii)* the collection of data to review the implementation of freedom of information requirements. The Office of the Comptroller General of the Union has already started preparing a project together with the United Nations Educational, Scientific and Cultural Organisation focusing on preparing the federal public administration for the implementation of a law. These activities will happen over 2011 and 2012.
- Consider introducing immediately into internal audit activities attention to record keeping and archives management as a means of ensuring public organisations are preparing to meet future freedom of information obligations. This may be done through the programme (performance) audits of organisations of the direct public administration by the Secretariat of Federal Internal Control. Brazil's centralisation of internal audit within the direct federal public administration could ensure the effective implementation of such a policy. The Secretariat of Federal Internal Control could also require this to be included in the Annual Plan of Internal Audit Activities of the audit units within organisations of the indirect federal public administration. The Secretariat of Federal Internal Control sets

guidelines and approves the Annual Plan of Internal Audit Activities of the audit units within organisations of the indirect federal public administration.

Despite the absence of a freedom of information law, much progress has been achieved during the last decade – particularly in relation to transparency in public expenditure – through the implementation of Complementary Law no. 101/2000. This has been supported by the use of new technologies to provide free real time access to information through the Transparency Portal and transparency pages. In order to strengthen citizens' utilisation of information proactively made available, the federal government of Brazil could consider the following proposals for action by the Office of the Comptroller General of the Union:

- Support citizens to conduct additional analysis of government data through the Transparency Portal and other portals of the federal public administration. In the immediate period, the portal/pages may be changed to allow direct comparisons of expenditure data across years and to permit downloading of expenditure and revenue data, as is already the case for select data (*e.g.* government administrative agreements). In the medium term, attention could focus on developing more sophisticated online analytic tools. Experience has shown that online analytic tools can be more effective to facilitate participation and oversight than allowing citizens to download masses of data. Finally, non-financial performance data could be incorporated into the Transparency Portal. Such data already exists through the websites of some federal public organisations (*e.g.* social development, health) but it is also a focus of attention by the Secretariat of the National Treasury.
- Periodically survey citizens on their use of the Transparency Portal and transparency pages of the federal public administration. Electronic surveys could be sent directly to subscribers of the Transparency Portal direct mailing system (more than 30 000 users as of July 2010). This would allow assessment of existing users but not necessarily those that do not use the portal. Surveys directed at subscribers of the portal's direct mailing system could be complemented by partnering with other organisations that conduct annual household surveys of the use of e-government services or information and communications technologies more generally. Working in partnership has the potential of reducing the cost of surveys and also capturing the views of others that do not currently use, or are not necessarily aware of, the Transparency Portal.
- Augment the content of the transparency pages of federal public organisations to include other types of information. At present transparency pages include information on: *i)* budget execution; *ii)* procurement; *iii)* administrative contracts; *iv)* administrative and transfer agreements; and *v)* travel and per diem. This may be expanded to include, among other items: *i)* relevant laws and regulations; *ii)* Charter of Citizens' Services; *iii)* annual management reports; and *iv)* external audit reports. In addition, and in line with recommendations on Enhancing Integrity in Public Procurement, procurement and contract information may be accompanied with annual procurement plans and information on contract amendments above a particular threshold (defined as a share of the original price). This would support citizens to have a one stop repository of key information relating to accountability of individual public organisations.
- In the medium to long term, assess the possibility of streamlining and standardising the websites of federal public organisations to publish the

information contained within the transparency pages on the main website. At present, the transparency pages are stand-alone websites separate from their respective federal public organisations. This creates parallel websites exist for public service delivery and accountability.

Since August 2009, all federal public organisations are obliged to provide clear information on their services, establish service standards and evaluate user satisfaction of their services through the creation of a Charter of Citizens' Services. In order to strengthen the effectiveness of these charters, the federal government of Brazil could consider the following proposals for action by the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Expand the content of charters to include a commitment to maintain professional excellence and high standards of conduct, the rights and obligations of citizens, information on channels available for complaints, compliments and feedback. This information is typically not included in the charters published to date but could help to create a more holistic understanding of the interaction between public officials and citizens.
- Encourage all federal public organisations to conduct a consultation process with different stakeholders when (re-)formulating and updating their charters. This can provide support in ensuring that: *i)* stakeholders are aware of their rights and obligations; *ii)* the charter is understood and considered relevant to their respective needs; and *iii)* the charter has been appropriately applied. In doing so, all necessary actions should also be taken to ensure the timely completion of a consultation process and amendment/revisions to the charter.
- Develop a good practice guide to help public officials implement charters and to highlight the experiences and lessons learned of other public organisations. A guide may include such topics as approaches to increasing awareness of charters among citizens and to assessing the implementation of service charters, etc. Good practices need not only originate from federal public organisations but also state and municipal public organisations, in Brazil or overseas. A large number of OECD member countries have developed charters and created their own good practice guides.
- Conduct periodic audits of the implementation of charters as part of responsibilities for ensuring compliance with the obligations of Federal Decree no. 6 932/2009 (establishing the obligation for federal public organisations to create charter). Audits may address the strategic commitment to implementing the service standards included within the charter and internal monitoring and reporting of performance against commitments in the charter.

In addition to the actions of the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union, the success of Charters of Citizens' Services requires effective implementation. In this regard, the federal government of Brazil could consider the following proposals for action by all individual public organisations:

- Develop protocols and procedures to inform citizens of information contained within the charter as a normal part of service delivery activities. To maintain a consistent and co-ordinated approach, consider that protocols and procedures relating to the charter also be incorporated into other communication and awareness-raising activities conducted by federal public organisations.

- Develop a systematic approach to internally monitor, evaluate and communicate the results of the implementation of charters, including publishing both quantitative and qualitative measures as part of annual management reports. To maintain a consistent and co-ordinated approach, consider aligning the evaluation of the charter's implementation with other evaluation activities.
- Place responsibility for the implementation of the charter in organisational ombudsman units (where they exist). These responsibilities may include, among others: *i)* evaluating the benefits of consultation with citizens and, where appropriate, engaging citizens and service users in the formulation of a charter; *ii)* ensuring information on the service standards and the charter is effectively communicated to citizens at the point of service delivery, among others; *iii)* raising awareness of, and providing advice to, officials in all organisational units on how to apply the charter in their daily activities; and *iv)* monitoring conformity with service standards outlined in the charter and, where necessary, bringing it to the attention of management where improvements are needed.

There has been an expansion of the ombudsman function throughout the federal public administration since 2002, to provide a point of contact for citizens requesting information and expressing opinions and feedback about the conduct of service delivery. The number of ombudsman units increased from 40 to 154 between 2002 and 2010. The federal government intended that by end 2010 all federal ministries would have an ombudsman unit. In order to strengthen the effectiveness of the ombudsman function, the federal government of Brazil could consider the following proposals for action by the Office of the Ombudsman General of the Union:

- Develop common reporting procedures to facilitate aggregation of data to the Ombudsman General of the Union, in order to assess the functioning of ombudsman units within the federal public administration. Such information may include: *i)* the number of reports received; *ii)* the types of reports received; *iii)* breakdown by regional offices and/or programmes; *iv)* average time for handling responses; and *v)* types of responses provided. At present, data does not allow for a complete understanding of the effectiveness of the ombudsman function.
- Develop generic software for ombudsman units to collect, monitor and evaluate the handling of information requests and other interactions with citizens. This use of this software by the ombudsman units may be mandatory for those that may otherwise not have adequate capacity to develop their own such system. It could also establish minimum requirements for other federal public organisations with their own existing ombudsman case/data management systems. At present, case management data for the ombudsman units varies across the federal public administration and does not always capture dimensions that can help to assess the functioning of case management. Standardised software would allow the generation of more standardised ombudsman data and reporting among federal public organisations.
- Facilitate dialogue and exchange between the Office of the Ombudsman General of the Union and the Office of the Federal Public Prosecutor. The Office of the Federal Public Prosecutor's public-interest litigation function brings it closer to a classical ombudsman in OECD member countries. Dialogue and exchange may include such activities as: *i)* case management training for officials working in the

ombudsman function; *ii)* standardisation of data and benchmarks relating to reports and citizens; *iii)* joint annual reporting of interactions with citizens; and *iv)* joint communication activities to inform citizens of their rights and the channels available to voice their concerns.

In addition to the actions of the Office of the Ombudsman General of the Union, the federal government of Brazil could consider the following proposals for action by all individual public organisations:

- Enhance the content of ombudsman reports to include more detailed information to issues by service area, organisational unit, response time, and response type (*e.g.* released in full, denied in part, denied, no records, time extension, etc.). At present, case management data for the ombudsman units varies across the federal public administration and does not always capture dimensions that can help to assess the functioning of case management. Improved reporting would help Congress and citizens to better evaluate the functioning of organisations ombudsman units.
- Include, in each avenue available to register complaints and suspect misconduct by public officials, an explicit statement that assures citizens of the confidentiality of information they provide and that they will not be discriminated against as a result of any complaint. At present there is no such explicit statement. The absence of such a statement may deter citizens from contacting ombudsman units within the federal public administration. In addition, it is critical that the content of any such explicit statement be incorporated into training activities and other guidelines for ombudsman officials. Raising an understanding among ombudsman officials is necessary for the effective implementation of any communicated commitment to confidentiality and unbiased treatment.

Citizen engagement in the accountability and control of federal government policies and programmes has been mainstreamed through councils and conferences within different policy sectors and at all levels of government. These forums provide a channel for citizens to directly participate in public policies. Councils focus on the design, implementation and monitoring of public policies. Conferences evaluate public policies and establish guidelines for improvement. In order to strengthen the alignment of citizen engagement with efforts to promote integrity, the federal government of Brazil could consider the following proposals for the Office of the Comptroller General of the Union together with the Office of the President of the Republic (Secretariat for Corruption Prevention and Strategic Information):

- Develop a framework for enhancing participation in policy making at the federal government level. This framework could identify both good management practices and policy interfaces across federal services, as well as create opportunities for cross-sectoral dialogue, for example by sharing lessons learnt across government.

Efforts have begun to create a sound legal framework for lobbying with an emphasis on openness and transparency with clear and enforceable standards. A bill is under discussion in the National Congress. The Council for Transparency and Combating Corruption is also debating how to address the issue of lobbying. In order to increase integrity and transparency in lobbying, and recognising the current proposals within the National Congress, the federal government of Brazil could consider the following proposals for action:

- Clarify public concerns regarding lobbying in order to understand properly the challenge in developing an appropriate framework for enhancing transparency and integrity in lobbying. Specific attention should focus on the administrative context of Brazil and not simply replicating the institutions and measures adopted in other countries. In this regard, attention should focus on the realities of a federalist state and presidential political system.
- Provide clear standards of conduct for public officials to guide their interactions with lobbyists and to manage possible conflicts of interest should they leave public office and become a lobbyist. Attention should be directed to ensure complementarity between the bills on lobbying and conflict of interest to ensure that they adequately deal with post-public employment and possible "revolving door" situations, while not deterring highly qualified individuals from entering the public service.
- Clearly define the terms "lobbying" and "lobbyist" in the formulation of an eventual law on lobbying. Attention should focus on: *i)* what actors and activities are covered; and *ii)* providing proper descriptions of exclusions in line with the administrative context of Brazil. Vague and partial definitions of which actors and what activities are covered by the law could endanger the proper functioning of the law.
- Establish clear standards and procedures for collecting and disclosing information on lobbying. Disclosure requirements can generate a lot of information. However, an effective lobbying law should ensure that: *i)* collected information is relevant to the core objectives of ensuring transparency, integrity and efficiency; *ii)* demands for information are realistic in practical and legal terms. Core disclosure requirements should elicit information that: *i)* captures the intent of lobbying activities; *ii)* identifies its beneficiaries; and *iii)* points to those on the receiving end of lobbying. Supplementary disclosure requirements should take into consideration the legitimate information needs of public decision makers as well as facilitate public scrutiny. Moreover, to adequately serve the public interest, disclosures on lobbying activities should be made and updated on a timely basis.
- Put in place mechanisms for effective implementation to secure compliance. To enhance compliance, a coherent spectrum of practices should involve key actors and also carefully balance incentives and sanctions. This includes communication to raise awareness of expected standards, education to support understanding and provide guidance, formal reporting to facilitate monitoring, leadership to set examples, incentives to create a culture of compliance, visible and proportionate sanctions, among others. Securing the objectives of a lobbying law may also require that officials have the authority to provide interpretation, to review filings, to demand clarifications from registrants and to pursue investigations further, if necessary, to the point of notifying the need for criminal enquiries.

Finally, in order to meet the growing expectations of society for good governance, there should be a formal review mechanism of the functioning of lobbying laws and policies on a regular basis in order to make necessary adjustments in light of experience with implementation.

Notes

1. See 2004 United Nations Convention Against Corruption, Article 10:

   "Taking into account the need to combat corruption, each state party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organisation, functioning and decision-making processes, where appropriate. Such measures may include, *inter alia*: *i)* adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organisation, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; *ii)* simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and *iii)* publishing information, which may include periodic reports on the risks of corruption in its public administration."

   See also 1996 Organisation of American States' Inter-American Convention Against Corruption, Article III:

   "For the purposes set forth in Article II of this Convention [*i)* to promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and *ii)* to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance] the states parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen… Mechanisms to encourage participation by civil society and non-governmental organisations in efforts to prevent corruption."

2. The other principles are legality, impersonality, morality and efficiency.

3. Budget transparency is defined as the full disclosure of all relevant fiscal information in a timely and systematic manner (OECD, 2002). Kopits and Craig (1998) include in their definition of budget transparency behavioural aspects, including clearly established conflict of interest rules for officials, freedom of information requirements, a transparent regulatory framework, open public procurement and employment practices and published performance audits. Alt and Lassen (2005) include the commitment to non-arbitrary language, the possibility of independent verification and the presence of supporting justification of policy decisions rather than simply information.

4. The budget proposal is available on the Federal Ministry of Planning, Budget and Management website (*www.planejamento.gov.br*).

5. The function and composition of the Planning, Budget and Control Joint Committee is described in Chapter 1.

6. On the income side, the revenue authority (*Secretaria da Receita Federal*) publishes a monthly balance of revenue collection by source of revenue, also showing deviations compared to estimated figures.

7. See *www.tesouro.fazenda.gov.br/contabilidade_governamental/gestao_orcamentaria.asp*.

8. In the United Kingdom, in June 2010, HM Treasury launched the Combined On-line Information System (COINS: *www.hm-treasury.gov.uk/psr_coins_data.htm*) as its own version of a government expenditure reporting system.

9. The Federal Service of Data Processing is a public company of the Federal Ministry of Finance, responsible for information technology components of the Federal Government Integrated Financial Administration System, such as system development and maintenance, infrastructure and network development.

10. Four issues have been published to date: Issue 1 (October to December 2008); Issue 2 (January to March 2009); Issue 3 (April to June 2009) and Issue 4 (July to December 2009).

11. With respect to institutional assistance in the legislature, there are highly qualified advisors in budgetary matters in both houses: 40 in the Budget Advisory Unit of the Chamber of Deputies, and 25 in the Budget Advisory Unit of the Federal Senate. These advisory units, revamped after the 1988 Federal Constitution, prepare analyses, studies and technical reports related to the most relevant budgetary issues or in response to specific requests from congressmen. The advisory units also undertake all the technical processing in support of the examination processes for the draft Pluri-Annual Plan, Budget Framework Law and Annual Budget Law, as well as in support of the amendments to these proposals (Tollini, 2009).

12. See Office of the Comptroller General of the Union and the Federal Ministry of Planning, Budget and Management Inter-ministerial Decree no. 140/2008.

13. Alagoas, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Mato Grosso, Pará, Paraná, Pernambuco, Rio Grande do Norte and Rio Grande do Sul.

14. This case and others are related in the article "About Payment Cards and Media Press" ("*Sobre cartões e jornalismo*"), published in *Revista da CGU* (the Official Journal of the Office of the Comptroller General of the Union), No. 4, *www.cgu.gov.br/Publicacoes/RevistaCgu/Arquivos/4edicao.pdf*.

15. See Federal Decree no. 6 932/2009 regarding the simplification of public services, the waiver of the notarisation of documents and establishment of Charter of Citizens' Service.

16. The concept of the Charter of Citizens' Service first began in 2000 with efforts to establish benchmarks of quality control for services performed by the federal government to citizens under the Quality of Service Provided for the Citizen Project (*Projeto de Padrões de Qualidade do Atendimento ao Cidadão*) (see Federal Decree no. 3 507/2000). In 2005, this project was replaced by the National Programme for Public Management and De-bureaucratisation (*Programa Nacional de Gestão Pública e Desburocratização*).

17. The first seminar was held for all regulatory agencies, the Department of Federal Police, the National Social Security Institute, National Health Surveillance Agency and the Brazilian Navy. The second was held for organisations linked to the Federal Ministry of National Integration. The third was held for 130 ombudsman units from the federal public administration.

18. This includes the Federal Ministry of Finance (*Ministério da Fazenda*), the Department of Federal Police (*Polícia Federal*) (within the direct public administration), as well as the Federal Savings Bank (*Caixa Econômica Federal*), the National Institute of Social Security (*Instituto Nacional do Serviço Social*), the Inactive Service Pensioners and Navy of Brazil (*Serviço de Inativos e Pensionistas da*

Marinha do Brasil), the National Health Surveillance Agency (*Agência Nacional de Vigilância Sanitária*) (within the indirect public administration) – as well as the Federal Justice Court in Mato Grosso and the Brazilian Army. The government's objective is to eventually expand the Charter of Citizens' Services to sub-national public organisations. To date, however, charters had been published in four states: Mato Grosso (legislative assembly), Pará (Hemope Foundation of the State Health Secretariat), Paraná (regional management board and regional labour court) and Maranhão (Municipal Institute of Urban Landscape [Impurities], Municipal Planning and Development, State Secretariat for Planning and Budget).

19. See Federal Law no. 8 490/1992 regarding the organisation of the Office of the President of the Republic and federal ministries.

20. For example, the National Electricity Energy Agency (*Agência Nacional de Energia Eléctrica*), the National Telecommunications Agency (*Agência Nacional de Telecomunicações*), the National Petroleum Agency (*Agência Nacional de Petróleo*), the National Health Surveillance Agency (*Agência Nacional de Vigilãncia Sanitária*), the National Supplementary Health Agency (*Agência Nacional de Saúde Suplementar*), the National Gas Agency (*Agência Nacional de Águas*), the National Land Transportation Agency (*Agência Nacional de Transporte Terrestre*), the National Water Transportation Agency (*Agência Nacional de Transporte Aquaviário*).

21. See Federal Decree No. 4 177/2002 regarding the transfer to the Inspectorate General of Administrative Discipline the competences and administrative units from the Civil House of the Office of the President of the Republic and the Federal Ministry of Justice. This was subsequently replaced by Federal Law no. 10 683/2003, regarding the organisation of the Office of the President of the Republic and federal ministries, which formalised the Ombudsman General of the Republic within the Office of the Comptroller General of the Union, together with the functions of administrative discipline and internal audit. Provisional Measure no. 163/2004 changed the name of the Office of the Ombudsman General of the Republic to the Office of the Ombudsman General of the Union, which was considered more appropriate as the office covers only the executive, and not the legislative or judicial, branch of the federal government.

22. In 2007, the Brazilian Association of Investigative Journalism (*Associação Brasileira de Jornalismo Investigativo*) carried out a study to test the transparency of state governments in terms of access to information. The Brazilian Association of Investigative Journalism requested, by telephone and/or email, 120 public organisations pertaining to the 3 branches of government to provide certain information (e.g. value of travel *per diem* paid to the institution's employees). The final report concludes that only 6% of all institutions effectively provided the information requested. In contrast, 40% provided incomplete data while the rest did not respond to the request at all (ABRAJI, 2007).

23. See 2004 United Nations Convention Against Corruption, Article 10:

"Taking into account the need to combat corruption, each state party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organisation, functioning and decision-making processes, where appropriate. Such measures may include, *inter alia*: *i)* adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organisation, functioning and decision-making processes of its

public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; *ii)* simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and *iii)* publishing information, which may include periodic reports on the risks of corruption in its public administration."

Annex 2.A1

National Institute for Social Security Charter of Citizens' Services Matrix

	Services that are directly requested by the citizen						Medical attesting required			Social assistance benefit
Benefit	Unemployment pension	Retirement pension	Special pension	Incarceration assistance	Widow/ widower pension	Maternity assistance	Handicap pension	Illness assistance	Accident assistance	Benefits of continued service
Beneficiary	Men with 35 years of contribution; women with 30 years. Irrespective of age	Urban workers at age of 65 (men), 60 (women). Rural workers at the age of 60 (men), 55 (women)	People who worked in a situation that may have put him/her under prejudice or damage personal integrity	Dependents of persons currently incarcerated in prison	Dependents of the deceased that were insured	Following the birth or adoption of a child	Persons who can not carry out any activities that provide income	Persons who cannot work due to accident or illness	Persons who have had debilitating accidents that impact on their capacity to work	Handicapped person or senior citizen
Requisite	To prove length of employment	To reach minimum age for pension	To prove length of employment and exposure to chemical, physical or biological products	Must be linked to the National Institute of Social Security at time of incarceration	Persons must be linked to the National Institute of Social Security at time spouse dies	Maid services are not subject to a grace period in case of adoption, the time period of paid leave changes : 0-1: 120 days, 1-4 years old: 60 days, 4-8 years old: 30 days	The person needs to be linked to the National Institute of Social Security	The person must have been prevented from working for at least 15 days	The person must be linked to the National Institute of Social Security	Proof of income that if divided by 4 is equivalent to minimum wage. The person cannot receive any other form of assistance from the pension service*. Must be Brazilian and resident of Brazil. In the case of benefits of person with disabilities, medical examination is necessary. In the case of social assistance, a minimum age of 65 is compulsory on the date of the demanded benefit

	Services that are directly requested by the citizen						Medical attesting required			Social assistance benefit
Benefit	Unemployment pension	Retirement pension	Special pension	Incarceration assistance	Widow/ widower pension	Maternity assistance	Handicap pension	Illness assistance	Accident assistance	Benefits of continued service
Documents	Workers Identification Number or number of inscription of contribution, Natural Persons Register number, or other document that verifies the time of service/contribution			Dependent groups: *i)* spouse or partner, non-emancipated children or children with disability; *ii)* parents; *iii)* siblings, not emancipated or handicapped		On the date of bearing the child, the assured parent should be assured in the National Institute of Social Security	Workers Identification Number, Natural Persons Register number, Welfare and Employment Book or other document that allows for evidence as for the time of contribution, the enterprise also has to provide proof			Workers Identification Number, Natural Persons Register number, Worker's ID, birth or marriage certificate, death certificate (if beneficiary is widow/widower), proof of income from all family members, in the case of responsibility of minors of 21 years old, documents assuring legal representation is needed
Restrictions	Year 2009 2010 2011	Shortage table	Months 168 174 180	Identification document with photo of the insured and their dependents, Workers Identification Number, Natural Persons Register number, Worker ID, birth certificates of children	Workers Identification Number, Natural Persons Register number, Worker ID, birth certificates of children and death certificate	Workers Identification Number, Natural Persons Register number, Worker ID, birth certificate of children or adoption certification	The person is not entitled to the benefit if the person already had the disease or condition when s/he started to contribute to the programme, except in case of worsening situations		Only given to the worker that is "avulso" (a special class of labour in Brazil that provides services to companies but is hired through a sindicate or other organisations that manage labourer. They usually work in ports, boats, salt extraction and agriculture)	

Services that do not require scheduling													
Service	Requiring another copy of income tax	Benefit transfer (in case of change of address by beneficiary)	Additional copy and benefit records	Paperwork for benefit requirements	Additional copy of tax payment receipts	Receipt of the National Registrar of Social Information remuneration	Information about benefits	Information regarding the individual contributor	Confirmation of the Notice of Pensioners	Registration together with social security benefit	Family support	Consultation of the benefit requirement	Change of address of the beneficiary or pensioners in the National Institute of Social Security Registrar
Documentation (in addition to photo ID)	None	Proof of residency	Workers Identification Number and Natural Persons Register	None	None	Workers Identification Number and Natural Persons Register	None	None	None	Natural Persons Register	Workers Identification Number, Natural Persons Register, vaccination card for infants under 14 years old, birth certificate and proof of school attendance	Registration number of the benefit requirement	
How to access	Phone service 135, Internet or Social Security Agency	Social Security Agency	Internet or Social Security Agency		Internet (with password) or Social Security Agency		Phone service 135, Internet or Social Security Agency				Social Security Agency	Phone service 135, Internet or Social Security Agency	

Annex 2.A2

Function and representation of select national councils

	Council	Established	Affiliated with federal ministry	Type	Government delegates	Citizen delegates
1	National Council on Health	1937	Health	Deliberative	8	40
2	National Council on National Institute for the Preservation of the Historic and Artistic Heritage	1937	National Institute for the Preservation of the Historic and Artistic Heritage	Consultative	2	18
3	National Council on Science and Technology	1951	National Council for Scientific and Technological Development	Consultative	5	11
4	National Council on Human Rights	1964	Office of the President of the Republic	Consultative	8	5
5	National Council on Tourism	1966	Tourism	Consultative	32	37
6	National Council on Immigration	1980	Labour and Employment	Deliberative	9	11
7	National Council on the Environment	1981	Environment	Consultative & Deliberative	74	33
8	National Council on Women's Rights	1985	Office of the President of the Republic	Deliberative	16	28
9	National Administration of the Palmares Foundation	1988	N/A	Consultative & Deliberative	5	7
10	National Council on the Guarantee for Employment Period Fund (FGTS)	1990	Labour and Employment	Deliberative	12	12
11	National Deliberative Council on the Worker's Assistance Fund	1990	Labour and Employment	Deliberative	6	12
12	National Council on Social Security	1991	Social Security	Deliberative	9	9
13	National Council on Children and Adolescent Rights	1991	Office of the President of the Republic	Deliberative	14	14
14	National Council on Education	1995	Education	Deliberative	14	10
15	National Council on Water Management	1997	N/A	Consultative & Deliberative	44	14
16	National Council on Sports	1998	Sports	Deliberative	7	15
17	National Council on Sustainable Rural Development	1999	Agriculture Development	Consultative	18	21
18	National Council on Disabled and Handicap Persons	1999	Justice	Deliberative	19	19
19	Consultative Council on the National Health Surveillance Agency	1999	National Health Surveillance Agency	Consultative	3	9
20	National Council on Elderly Rights	2002	Office of the President of the Republic	Deliberative	14	14
21	National Council on Economic Solidarity	2003	Labour and Employment	Consultative	19	37

	Council	Established	Affiliated with federal ministry	Type	Government delegates	Citizen delegates

22	National Council on Food and Nutritional Safety	2003	Office of the President of the Republic	Consultative	19	38
23	National Council on Racial Equality	2003	Office of the President of the Republic	Consultative	22	22
24	National Council on Economic and Social Development	2003	Office of the President of the Republic	Consultative	12	90
25	National Council on Water and Fisheries	2003	N/A	Consultative	27	27
26	National Council on Transparency and Combating Corruption	2003	Office of the Comptroller General of the Union	Consultative	10	10
27	National Council on Combating Piracy and Offenses Against Intellectual Property	2003	Justice	Consultative	14	7
28	National Council on Cities	2004	Cities	Consultative & Deliberative	37	49
29	National Council on the *Fundação Rui Barbosa* House	2004	N/A	Consultative	2	10
30	National Council on Youth	2005	N/A	Consultative	20	40
31	National Council on the Fight Against Discrimination	2005	Justice	Consultative	11	12
32	National Council on Cultural Policy	2005	Culture	Consultative & Deliberative	26	26
33	National Council on Narcotics Policy	2006	Office of the President of the Republic	Deliberative	10	13
34	National Commission for Indigenous Policies	2006	Justice	N/A	13	2
35	National Council for Monitoring and Control of the National Fund for Education Development	2007	National Fund for Education Development	Consultative & Deliberative	7	7
36	National Council on Amazon Monitoring Fund	2007	N/A	N/A	N/A	N/A
37	National Council on Northeast Monitoring Fund	2007	N/A	N/A	N/A	N/A
38	Brazilian Council on Social and Participation Mercosul	2008	Office of the President of the Republic	Consultative & Deliberative	20	40

Note: Data on all 61 national councils not available.

Source: Secretariat of National Social Interaction, Office of the President of the Republic.

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Chapter 3

Implementing a risk-based approach to internal control

Internal control is a dynamic process that contributes to enhancing integrity by addressing risks and providing a reasonable assurance that public sector organisations achieve their objectives. This chapter examines the drive by the federal government of Brazil to strengthen internal control within Brazil's public administration. This drive has been supported by the automation of back-office management information systems and mandatory centralisation of internal audit within federal ministries. The proposals for action focus on *i)* advancing the implementation of risk management within federal public organisations; *ii)* monitoring the impact and effectiveness of internal audit; and *iii)* strengthening co-ordination between central government authorities to integrate risk management into future management reforms.

Introduction

Internal control is commonly recognised as the set of means put in place to mitigate risks and to provide reasonable assurance that public organisations: *i)* deliver quality services in an efficient manner, in accordance with planned outcomes; *ii)* safeguard public resources against misconduct and (active and passive) waste; *iii)* maintain, and disclose through timely reporting, reliable financial and management information; and *iv)* comply with applicable legislation and standards of conduct (see *e.g.* INTOSAI, 2004). Reasonable assurance is achieved through management systems and practices that mitigate risk and vulnerabilities (*i.e.* internal control, or sometimes referred to as management control) and an independent and objective assessment of their functioning (*i.e.* internal audit). Public officials' standards of conduct, discussed in Chapter 4 of this publication, are also an important factor in creating a sound environment for internal control. The role of internal control in preventing corruption in public organisations is also recognised in international conventions against corruption.[1] Internal control and internal audit, no matter how well conceived and operated, can provide only reasonable – but not absolute – assurance to decision makers and public managers about the integrity of their organisation's operations.

Implementing a risk-based approach to internal control purports to ensure that management is responsive to the potential vulnerabilities facing their respective public organisations and functions. Rather than simply regulating internal practices and procedures, management must put in place a systematic process and adequate capability (*i.e.* knowledge, resources, etc.) to assess and use assessment results to adjust management systems in a cost-effective manner to prevent risks from (re-)occurring. It also necessitates an *ex post* assessment of risk mitigating actions, recognising that earlier diagnosis and actions may not always have the desired effect. This requires leadership to create a culture that encourages risk management as a strategic and continuous action supporting prevention rather than as means of assigning blame to individuals and identify system vulnerabilities. Although internal auditors can play a valuable advisory service on internal control, the internal auditor should not be a substitute for a risk-based approach to internal control. Finally, to be effective, internal control and internal audit need to be integrated with other organisational systems that feed directly into management frameworks and decision-making processes as a means of strengthening public governance.

This chapter describes the main trends and challenges that can be identified in Brazil's drive to modernise its approach and systems for internal control within the federal public administration. Brazil's systems of internal control have historically been characterised by a strong compliance culture reflecting a combination of administrative and historical developments. Civil law countries, such as Brazil, are characterised by a high degree of formalisation of administrative decision-making processes, often spelled out in great procedural detail in primary and secondary legislation. Brazil's rules-based approach also reflects, in part, the historical influence of military leadership and the need to address asymmetric capabilities across the federal public administration. The modernisation of internal control in Brazil has been driven by a number of factors including increased federal spending (see Figure 3.1), innovations in service delivery and a push towards performance and accountability during the 1990s and 2000s. Innovation in service delivery has, in particular, been recognised as a driving force for reinforcing internal control in OECD member countries (see, *e.g.* Blöndal, 2005; Laking, 2005; Ruffner and Sevilla, 2004; Sevilla, 2005).

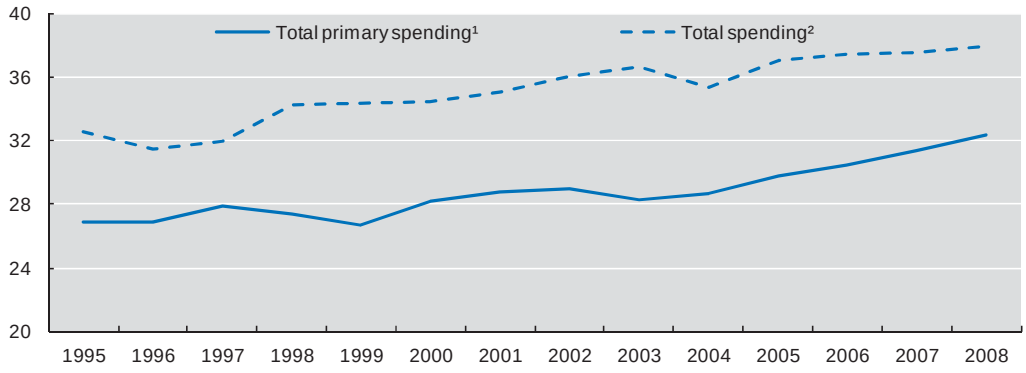
Table 3.1. **Civil and common law administrative cultures in Brazil and select countries**

Civil law	Common law
Argentina, **Brazil**, Chile, France, Germany, Italy, Japan, Korea, Mexico, Portugal, Spain	Australia, Canada,* South Africa, United Kingdom, United States

Note: for historical reasons, the Canadian province of Quebec maintains a hybrid civil/common law system.

Figure 3.1. **Evolution of general government spending in Brazil**

% of GDP



Notes:

1. Calculated as tax revenue minus the general government primary budget surplus.

2. Calculated as tax revenue plus the general government overall (nominal) budget balance.

Source: OECD (2009), *OECD Economic Surveys: Brazil 2009*, OECD Publishing, Paris, doi: 10.1787/eco_surveys-bra-2009-en.

The drive to modernise internal controls has been led by the Office of the Comptroller General of the Union (*Controladoria-Geral da União*); the Federal Ministry of Planning, Budget and Management (*Ministério do Planejamento, Orçamento e Gestão*); and the Federal Ministry of Finance (*Ministério da Fazenda*).

- The Office of the Comptroller General of the Union, as the central internal control authority, establishes policies and rules on internal control and internal audit for the direct and indirect federal public administration. Within its organisational structure, two functional secretariats contribute to this mission. The Secretariat for Federal Internal Control (*Secretaria Federal de Controle Interno*) provides a mandatory, shared internal audit and inspection service for organisations of the direct federal public administration. In addition, it conducts complementary audit and inspection services for organisations of the indirect federal public administration. It also plays an increasingly active advisory role in focusing public managers' attention on their responsibilities to implement effective internal control. Complementing these activities, the Secretariat for Corruption Prevention and Strategic Information *(Secretaria de Prevenção da Corrupção e Informações Estratégicas*) manages the Public Spending Observatory (*Observatório da Despesa Pública*), tracking government spending data as a basis to identify possible irregularities and misconduct. More recently, these secretariats have begun developing general risk management methodologies for federal public

organisations and surveying federal public organisations to identify good practices in internal control.

- The Federal Ministry of Planning, Budget and Management, among other things, establishes policies and rules for general management, human resource management, information management and procurement management for the federal public administration. For example, the Secretariat for Management (*Secretaria de Gestão*) co-ordinates, guides and supervises the modernisation of public management within the federal public administration. Among its other competencies, and as discussed in Chapter 2, the Secretariat for Management co-ordinates the National Programme for Public Management and De-bureaucratisation (*GesPública*) including the simplification of management processes and the development of management performance indicators. The Secretariat for Logistics and Information Technology (*Secretaria de Logística e Tecnologia da Informação*) formulates and promotes the implementation of policies and guidelines regarding financial management, public procurement and administrative contracts, archive and document management. It also manages the Integrated General Services Administration System (*Sistema Integrado de Administração de Serviços Gerais*).
- The Federal Ministry of Finance, through the Secretariat of the National Treasury (*Secretaria Tesouro Nacional*), establishes policies and rules on financial management and the Federal Accounting System (*Sistema de Contabilidade Federal*). The Secretariat of the National Treasury establishes accounting standards and procedures to record transactions and events related to government operations. It also maintains the Federal Government Financial Administration System (*Sistema de Administração Financeira do Governo Federal*) and is developing the Federal Government Cost (Performance) System (*Sistema de Custos do Governo Federal*).

In addition, it is intended that the Office of the Comptroller General of the Union be supported by the Commission for Co-ordination of Internal Control (*Comissão de Coordenação de Controle Interno*). This commission is intended as an advisory body to the internal control system of the federal public administration and tasked with proposing measures: *i)* to consolidate the existing system of internal control; *ii)* to standardise the application of internal control; *iii)* to integrate internal control within other management systems and activities; *iv)* to formulate methods to test and evaluate the activities of internal control; and *v)* to analyse proposals related to internal control by the Comptroller General of the Union. It is composed of nine members and chaired by the Federal Minister for Transparency and Control. Its members are predominantly from the Office of the Comptroller General of the Union including its executive secretary, the Secretary of Federal Internal Control and the General Co-ordinator of Standards and Guidance for Internal Control. In addition, the Comptroller General of the Union appoints as members, for a period of one year, one special advisor for internal control from an organisation of the direct public administration and two representatives of internal audit units from organisations of indirect public administration. The remainder of this chapter is structured in two sections. The first section examines the framework for internal control within the federal public administration. It includes the focus on internal control and institutional arrangements within the federal public administration. It subsequently discusses recent efforts to introduce a risk-based approach to management control protocols at a government-wide and organisation-specific levels. The second part examines the institutional arrangements for creating a professional and independent internal audit

within Brazil's federal public administration, including differences between the direct and indirect administrations. It also discusses efforts to maintain the capability of the internal audit function using modern audit techniques, adequate resourcing and performance measurement.

Internal control

Internal control is shaped and supported by the policies, instruments, systems and techniques devised to ensure that public organisations achieve their objectives while appropriately managing operational risks. Brazil's 1988 Federal Constitution contains an explicit reference to internal control within each of the 3 branches of government spanning general operations, financial management and asset management.[2] In particular, the 1988 Federal Constitution re-defines internal control, which was previously solely an auxiliary to the external control provided by the Federal Court of Accounts and broadens the scope of internal control beyond compliance alone. Brazil's systems of internal control have since undergone significant consolidation in parallel with modernisation of the public financial management system during the 1990s. Subsequent changes are focused on developing more risk-based approaches to target vulnerabilities in operations at government-wide and organisation-specific levels.

Internal control is broadly defined to measure effectiveness, efficiency and compliance within the public management (expenditure) cycle

The 1988 Federal Constitution defines the purpose of internal control to evaluate both the achievement of the goals established in the four-year Pluri-Annual Plan (*Plano Plurianual*) and the implementation of government programmes and execution of the Annual Budget Law (*Lei Orçamentária Anual*). Evaluation measures effectiveness, efficiency and compliance.[3] Federal Law no. 10 180/2001 subsequently articulates the objective of internal control as evaluating government actions and the management of public officials, and supporting the function of external control.[4] This law defines internal control function as responsible for: *i)* assessing achievements of the targets set in the federal government's Pluri-Annual Plan; *ii)* evaluating the implementation of government programmes with respect to their objectives and quality of management; *iii)* providing information on the physical and financial status of projects and activities in the federal budget; *iv)* creating the conditions for the exercise of direct social control over federally funded programmes; and *v)* preparing the Annual Rendering of Accounts of the President of the Republic to be sent to the National Congress.

Federal Law no. 10 180/2001 formalised a number of changes to internal control that occurred gradually since the promulgation of the 1988 Federal Constitution. First, it links internal control to the public management (expenditure) cycle and the systems for planning, budgeting, financial management and accounting within the federal public administration.[5] Second, it distinguishes internal control as a separate area of responsibility from financial management and accounting, each with its own purpose, competencies and lead authority. Third, it enlarges the focus of internal control, adding the evaluation of programme performance and outcomes to inspection of compliance in administrative decision making. Fourth, it expands the role of internal control to investigate acts and events considered illegal or irregular committed by private actors, and not just public officials, in the use of federal public funds.

A series of developments led to the separation of internal control from financial management and accounting, including: *i)* the creation of the Federal Government

Financial Administration System in 1987, which centralised and automated public accounting procedures; *ii)* the re-definition of internal control in the 1988 Federal Constitution, as described above; *iii)* the conclusions of a 1992 Federal Court of Accounts audit of internal control and a 1993 Congressional Inquiry "Budgetgate", both revealing alarming ineffectiveness of the existing systems of internal control; and *iv)* a change in orientation in the Federal Ministry of Finance, with an emphasis on cash and debt management and controlling inflation rather than fiduciary responsibilities. In particular, the 1992 Federal Court of Accounts audit recommended a significant re-organisation of internal control through the creation of its own administrative structure, separate from the Secretariat of the National Treasury. As a result, the Secretariat of Federal Internal Control was created. It was only in 2001 that this secretariat was relocated from the Federal Ministry of Finance to the newly established Office of the Comptroller General of the Union within the Office of the President of the Republic.

The Office of the Comptroller General of the Union develops and monitors internal control policies within the federal public administration

The Office of the Comptroller General of the Union fulfils many of the functions of a central internal control authority. These include: *i)* identifying and assessing management-related issues to determine if a government-wide approach is necessary; *ii)* formulating, reviewing and adjusting policy instruments; and *iii)* overseeing, interpreting and providing advice to public organisations on the application of policy instruments. As noted in the beginning of this chapter, policies and guidelines on general management, and human resource management, information management and procurement management are the responsibility of the Federal Ministry of Planning, Budget and Management. Financial management and accounting is the responsibility of the Federal Ministry of Finance. While there are instances where these three federal authorities work closely together, it does not appear to always be the case. For example, the Secretariat of Management is working with federal public organisations to re-engineer their internal practices and processes to improve service delivery. The extent to which the Office of the Comptroller General of the Union is actively involved in these changes appears to be limited largely to the implementation, rather than the formulation, of the reforms. Mechanisms for closer co-ordination in the modernisation of the internal control framework among the Office of the Comptroller General of the Union with the Secretariat of Management, Logistics and Information Technology (Federal Ministry of Planning, Budget and Management) and the Secretariat of the National Treasury (Federal Ministry of Finance) should be explored.

The "Federal Internal Control Manual" is a key instrument of the Office of the Comptroller General of the Union. It lays down the main concepts, guidelines, principles and rules regarding internal control. The manual, issued in 2001 by the Secretariat of Federal Internal Control, describes the general planning of control activities within the internal control system of the federal public administration. It also sets forth some general principles and guidelines on the use of benchmarks and indicators. Table 3.2 provides an overview of the main steps in planning internal control actions and the key documents involved. The manual lays out procedures and sources of information for preparing planning documents and for monitoring compliance with the recommendations and determinations of the internal and external control bodies. Sources of information include discussions with intermediate managers, governmental management systems (*e.g.* the Federal Government Financial Administration System, Integrated Human Resources Administration System, etc.) and audit reports.

Table 3.2. **Internal control planning guidelines, as outlined in Brazil's 2001 "Internal Control Manual", issued by the Secretariat of Federal Internal Control**

Phase	Activity
1	Mapping public policies in each public organisation, identifying macro-objectives, resources and responsible agents in order to assess the strategic importance of each policy.
2	Prioritising government programmes, based on defined political and strategic criteria, as well as risks categorised in accordance with their materiality, relevance, critical nature. Programmes will be classified as "essential," "relevant," and "auxiliary", with the former requiring the most attention for "systematic control".
3	Describing each essential programme and identifying its constituent actions.
4	Prioritising actions within each programme based on strategic criteria.
5	Preparing a report on the status of each selected action (*relatório de situação*) identifying: *i)* goals and benchmarks; *ii)* responsible bodies; *iii)* implementation mechanisms; *iv)* control systems, including direct social oversight; *v)* actions carried out in the context of the internal control system during the preceding year.
6	Preparing a strategic plan (*plano estratégico*) for the selected action, including the critical and vulnerable aspects impacting implementation, as well as the control approach to be adopted.
7	Preparing an operational plan (*plano operacional*) of each working task identified in the strategic plan, identifying the control actions to be undertaken and defining the necessary instruments and implementation timelines.

Source: Secretariat for Federal Internal Control, Office of the Comptroller General of the Union.

The current manual is more theoretical than operational in nature and could be supplemented with voluntary good practices guides and case studies to assist public managers. Good practices may help public managers effectively use generic tools (*e.g.* checklists, templates, etc.) throughout the internal control planning process. Case studies can be presented within good practice guides, or as distinct materials showing in more depth how processes were conducted, tools applied, results monitored and lessons learnt. To define good practices and prepare case studies, the central authority could survey and identify public organisations that have effectively applied internal control with tangible results. These may include federal, state and municipal public organisations, as well as private organisations, in Brazil and overseas.

The Commission for Co-ordination of Internal Control does not include representatives from the Federal Ministry of Planning, Budget and Management nor from the Federal Ministry of Finance.

Special advisors on internal control advise federal ministers on matters of internal control and internal audit

Special advisors on internal control sit inside the executive secretariat of each organisation of the direct federal public administration, to serve as interlocutors between the Secretariat of Federal Internal Control and their respective federal ministers. As level 5 supervisory and management officials, the advisors are one level below the executive secretary and heads of functional secretariats. With this responsibility comes accountability. Special advisers on internal control are liable for any damage and losses if they do not report to the Office of the Comptroller General of the Union within 15 days any irregularities of which they become aware. In addition to their advisory functions, these officials prepare the annual accounts and management reports and monitor the implementation of internal and external audit. While the special advisors on internal control interact with the Secretariat of Federal Internal Control to define annual audit plans on behalf of their respective federal ministers, they do not formally manage or oversee internal audit. As discussed in the second part of this chapter, internal audit for organisations of the direct federal public administration is conducted by the Secretariat of Federal Internal Control.

Special advisors on internal control are selected by their respective federal ministers, but their appointments are subject to final approval by the Comptroller General of the Union. Although the Comptroller General of the Union can refuse appointments and has done so in the past, approval is considered procedural in nature. In practice, more than half of all special advisors for internal control are Financial and Control Analysts seconded from the Office of the Comptroller General of the Union.

According the Secretariat of Federal Internal Control, special advisors on internal control can be supported by administrative officials within the executive secretariat of their organisations. However, in some specific cases (*e.g.* the Federal Ministries of Social Development and Fight Against Hunger, Transport, Culture, Education and Health), the Office of the Comptroller General of the Union has allocated approximately five finance and control career officials to work with the advisor. This allocation was negotiated with these federal organisations and reflects the priority of these public policy areas for the government's goals. To provide this support, the Office of the Comptroller General of the Union carried out a competitive entry examination in 2008 in which a number of new officials were specifically recruited for these federal ministries. This allocation is formalised by an agreement between the Office of the Comptroller General of the Union and these five federal ministries defining the role of the officials supporting the special advisor. These agreements require finance and control career officials to provide assistance to public managers in implementing internal control and preparing manuals and guidelines as well as monitoring management actions.

Box 3.1. **The changing location of the policy and stewardship function for the internal control system of Brazil's federal public administration**

Brazil's internal control system of the federal public administration has continuously evolved over the last 50 years. There have been four main phases in this evolution: *i)* 1967-79; *ii)* 1979-86; *iii)* 1986-94; and *iv)* 2001 onwards. The responsibility for policy and stewardship of the internal control system has oscillated between the Federal Ministry of Finance and the Office of the President of the Republic.

- Federal Decree-Law no. 200/1967 created the internal control system under the central guidance of the Federal Ministry of Finance. Its creation followed the abolition by the 1967 Federal Constitution of a system of *ex ante* control of public expenditure by the Federal Court of Accounts. Under this system, General Inspectorates of Finance (*Inspetorias Gerais de Finanças*) were located within each federal ministry to advise their respective ministers on matters of internal control and internal audit.

Box 3.1. **The changing location of the policy and stewardship function for the internal control system of Brazil's federal public administration** *(cont'd)*

- In 1979, the policy and stewardship function of internal control was transferred from the Federal Ministry of Finance to the Secretariat of Planning (*Secretaria de Planejamento*) within the Office of the President of the Republic. At the level of individual federal public organisations, the General Inspectorates of Finance were replaced by the Secretariats of Internal Control (*Secretarias de Controle Interno*). The transfer of the policy and stewardship function of the internal control system corresponded with a change from financial audit to management audit.
- In 1986, the policy and stewardship functions of the internal control system were once again re-assigned to the Federal Ministry of Finance. The functions of the internal control authority were located in the newly established Secretariat of the National Treasury, together with financial management and accounting. The creation of the Secretariat of the National Treasury represented a key step towards the consolidation of public finances. At the level of individual federal public organisations, the Secretariats of Internal Control continued to operate with a high degree of autonomy.
- In 1994, the internal control function was separated from the Secretariat of the National Treasury to a dedicated authority, the Secretariat of Federal Internal Control. This move created a stronger hierarchy between the Secretariat of Federal Internal Control and the Secretariats of Internal Control. While Secretariats of Internal Control remained physically within federal ministries, they now reported to the central authority of the system. The creation of the Secretariat of Federal Internal Control was accompanied by the creation of regional offices in all states and the introduction of audits of municipalities.
- Federal Law no. 10 180/2001 consolidated the existing legislation on internal control. In 2002 the Secretariat of Federal Internal Control was moved from the Federal Ministry of Finance to the Office of the President of the Republic, following the recommendation of a Federal Court of Accounts report adopted the previous year. Less than two months later, the Secretariat of Federal Internal Control was incorporated as one of the main cornerstones of the Office of the Comptroller General of the Union, which was created in 2001.

Source: Olivieri, C. (2008), *Política e Burocracia no Brasil: O Controle Sobre a Execução das Políticas Públicas* [Politics and Bureaucracy in Brazil: the Control Over the Execution of Public Policies], Fundação Getulio Vargas, Escola de Administração São Paulo; da Silva Balbe, R. (2010), *O Resultado da Atuaçao Controle Interno no Context das Reformas na Administraçao Pública* [The Result of the Internal Control Activities in the Context of Reforms in Public Administration], Instituto Universitário de Lisboa – Departamento de Ciência Política e Políticas Públicas.

Internal control is supported by common automated back-office systems that provide for the segregation of duties and documentation of decision making

The direct federal public administration is regulated by a number of common management and supporting information systems (see Table 3.3). The centralisation and automation of these systems contributes to a common management framework and standardised administrative rules within the federal public administration. These directly support internal control by ensuring that all transactions and significant events are documented and authorised and only executed by officials acting within the scope of their

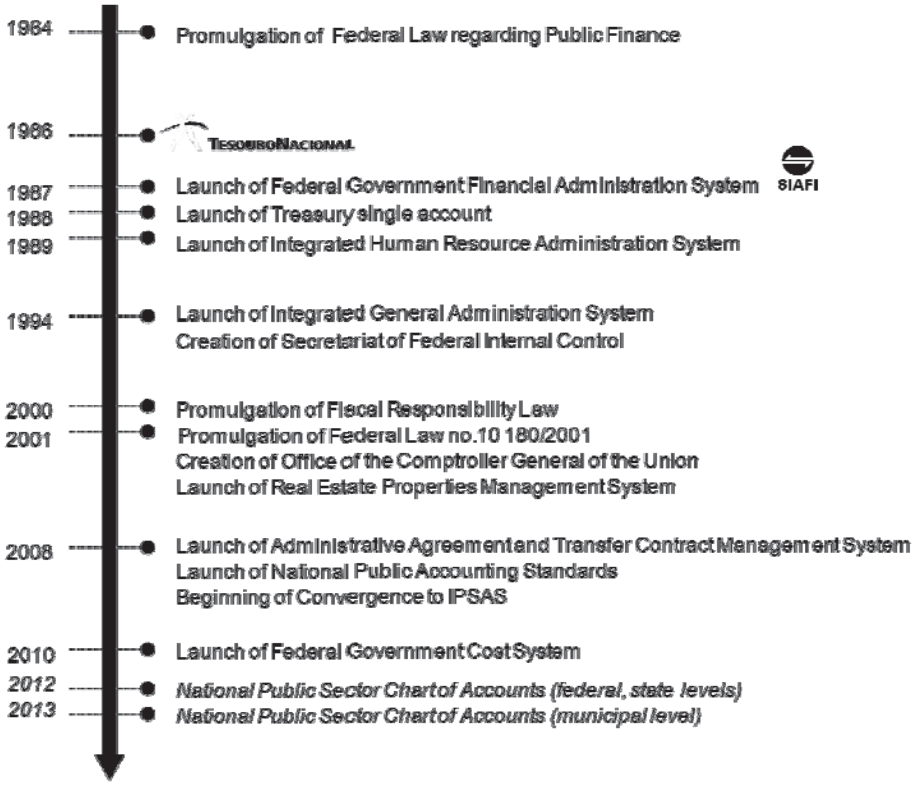
authority. Automation also assists in creating reliable and timely data that can be captured and communicated to various levels within public organisations for management decision making. Similarly, these systems serve as direct input into programme evaluation and audit necessary for supporting policy learning and adjustment.

Table 3.3. **Management systems within the direct federal public administration**

Management system	Lead authority	Supporting ICT system
Planning	Secretariat of Planning and Strategic Investment, Federal Ministry of Planning, Budget and Management	Budget Planning and Management Information System (SIGPlan) Accelerated Growth Programme Monitoring System (SISPAC)
Budgeting	Secretariat of Federal Budget, Federal Ministry of Planning, Budget and Management	Integrated System of Budget Data (SIDOR)
	Department of Co-ordination and Control of State Enterprises, Federal Ministry of Planning, Budget and Management	State Enterprise Information System (SIEST)
Financial management and accounting	Secretariat of National Treasury, Federal Ministry of Finance	Federal Government's Financial Administration System (SIAFI)
Procurement and administrative contracts	Secretariat for Logistics and Information Technology, Ministry of Planning, Budget and Management	Integrated General Services Administration System (SIASG)/ Comprasnet
Administrative and transfer agreements	Secretariat of Management and Secretariat for Logistics and Information Technology, Ministry of Planning, Budget and Management	Administrative Agreement and Transfer Contract Management System (SICONV)
Human resource management	Secretariat of Human Resources, Ministry of Planning, Budget and Management	Integrated Human Resources Administrative System (SIAPE)
State property, real estate and buildings	Secretariat for State Assets, Federal Ministry of Planning, Budget and Management	Integrated Asset Management System (SIAPA)
	General Co-ordination of Functional Real Estate, Office of the President of the Republic (residential housing)	Real Estate Properties Management System (SPIU)

Core among these management systems is the Federal Government Financial Administration System, an accounting and financial reporting system. The establishment of the Federal Government Financial Administration System in 1987 supported the standardisation of accounting and financial reporting within the federal public administration. This system constitutes a single database for accounting and financial information across the federal government, including the indirect public administration, legislature and judiciary. All budget transactions – including allocation, commitment, verification and payment – must be performed and recorded through the Federal Government Financial Administration System. The system is operated by public organisations. Each individual user must provide an identity number to access the system and all actions are automatically recorded and archived. Data cannot be input directly, but requires appropriate documentation (*e.g.* bank transfer, expenditure note, etc.). The system serves as an essential source of information for internal and external audit and provides direct input for the government's Transparency Portal (see Chapter 2). Prior to 1986, financial management was characterised by fragmented accounting systems and excessive physical *ex ante* controls resulting in significant delays in bookkeeping of more than 45 days after the end of the calendar month, and data inconsistencies. This affected management decision-making processes. Today, there are approximately 5 000 administrative units and 60 000 public officials connected through the Federal Government Financial Administration System.

Figure 3.2. **Evolution of Brazil's federal public administration's back office financial management and accounting systems**



Source: Secretariat of National Treasury, Federal Ministry of Finance.

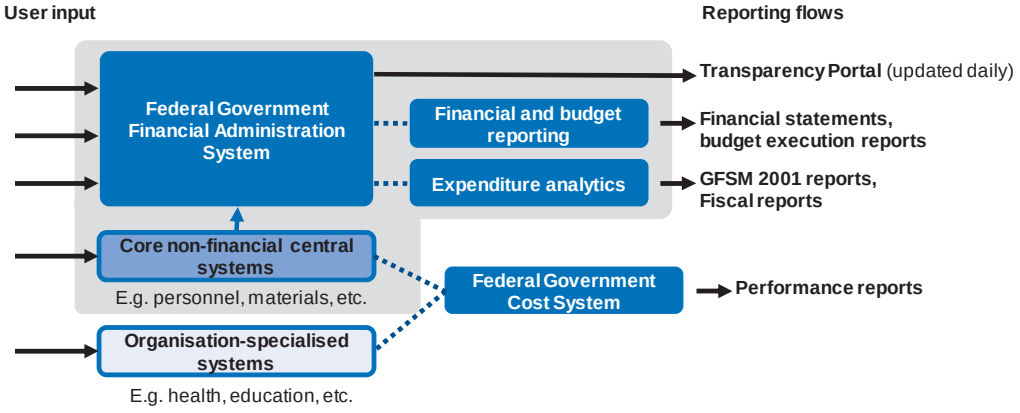
The introduction of the Federal Government Financial Administration System aided in the consolidation of government banking arrangements into a treasury single account. The substitution of the government operating account at Brazil's largest public commercial bank, the Bank of Brazil (*Banco de Brasil*), with the treasury operating account at the Central Bank created a direct link between the management and control of federal finance and the budget operations of the various management units. Implementation of the operating account eliminated more than 5 000 government bank accounts and made it possible to exert more effective control over the government cash flow. The treasury single account covers only federal public organisations. It also includes the transactions of the Institute of Social Security (*Instituto Nacional do Seguro Social*) and special accounts in foreign currencies (including external loans). Collection of revenues and payments is handled through the Bank of Brazil and, only in some exceptional cases, other commercial banks authorised by the Secretariat of National Treasury. Moreover, the absence of a treasury single account in the past resulted in the proliferation of government bank accounts, idle cash stock mostly unremunerated or low-yielding accounts and weak internal control. The was magnified by the proliferation of government bank accounts held by budget units (*e.g.* bank accounts for materials, bank accounts for personnel expenditure, bank accounts for material consumption, etc).

Most of the other management systems of the federal public administration are integrated into this system. For instance, the Planning and Management Information System (*Sistema de Informações Gerenciais e de Planejamento*) is used to establish and

monitor qualitative goals and establish expenditure limits for the Pluri-Annual Plan. The Integrated Budgetary Data System (*Sistema Integgrado de Dados Orçamentários*) is used to prepare the draft Annual Budget Law, and allows for automatic update of changes in the budget into the Federal Government Financial Administration System. The Integrated General Services Administration System/Comprasnet supports the monitoring of procurement decision making and the management of general services (*i.e.* goods, buildings, vehicles, communications, etc.). Some systems, such as the Integrated Human Resource Administration System (*Sistema Integrado de Administação de Recursos Humanos*) and the Administrative Agreement and Transfer Contract Management System (*Sistema de Gestão de Convênio, Contrato de Repasses e Termo de Parceria*), are not fully integrated into the Federal Government Financial Administration System.

The Secretariat of the National Treasury is seeking to introduce the Federal Government Cost System to measure the efficiency of federal government programmes. This system will automatically combine information from various management systems (*e.g.* Federal Government Financial Administration System, Integrated Human Resource Administration System, Information Management and Planning System, Integrated General Services Administration System, etc.) to better assess and evaluate options for the delivery of public services. This will include examining and measuring the likely benefits, costs and effects of decisions by public managers and the federal government as a pre-requisite for evidence-based decision making. In the management module, the system will provide pre-formatted reports that enable users to extract information in a practical and quick way. The Secretariat of the National Treasury has a team that is responsible, among other activities, for creating new reports to meet the needs of users.

Figure 3.3. **Data and reporting flows within Brazil's federal public administration**



Source: Secretariat of National Treasury, Federal Ministry of Finance.

In the first semester of 2009, the Federal Ministry of Finance initiated the development of the Federal Government Cost System. It subsequently presented an "Exploratory Prototype" of the system for approval to several authorities in the Federal Ministries of Finance and Planning, Budget and Management late in the second semester of 2009. The project was approved in July 2010 with the Secretariat of the National Treasury since initiating training for public officials who will use the system. The system has been available to federal public organisations since end-August 2010. Although not formally involved in the system's development, the Secretariat for Federal Internal Control envisions the use of cost data to evaluate the managerial performance of

managers of federal public organisations, focusing on efficiency, effectiveness and economy in the management of public resources.

The federal government has been responsive to federal public administration-wide risks to prevent misconduct and waste

Brazil has a well-developed body of rules and systems in place to foster integrity in public service delivery and the operation of public organisations. For example, comprehensive commitment controls effectively limit commitments to actual cash availability and approved budget allocations. At the commitment stage (*empenho*) proposed expenditure is verified to ensure that spending proposals have been approved by an authorised official, that funds have been appropriated in the budget, that sufficient funds remain available in the proper category of expenditure, and that the expenditure is proposed under the correct category. At the verification stage (*liquidação*) the documentary evidence that the goods have been received or that the service has actually been performed is verified. Before the payment stage (*pagamento*) confirmation is needed that a valid obligation exists, that the competent person has signed that the goods or services have been received as expected, that the invoice and other documents requesting payment are correct and suitable for payment, and that the contractor is correctly identified. These controls are built into the Federal Government Financial Administration System.

At the same time, Brazil's control system has demonstrated a flexibility to develop a whole-of-government approach to specific management-related issues. Two examples relate to the use of: *i)* administrative agreements (*convênios*) and transfer agreements (*contratos de repasse*); and *ii)* the Federal Government Payment Card (*Cartão de Pagamentos do Governo Federal*).

Administrative and transfer agreements

Administrative agreements involve the transfer of financial resources from the budget of a federal public organisation with a sub-national public or private not-for-profit organisation for the implementation of activities as part of a federal governmental programme. Transfer agreements are an instrument whereby the transfer of financial resources is processed through an institution or federal public financial agent acting as a representative of the Union. They are distinguished from administrative contracts (*contratos administrativos*) because of their not-for-profit nature. (For a discussion on administrative contracts, see Chapter 5.)

In 2002, the Secretariat of Federal Internal Control issued a technical note indicating the need to adopt measures aimed at examining the accounts of federal public organisations that use administrative and transfer agreements. The decision came in response to concerns over problems with the management of administrative contracts, namely perceived "excessive" discretion of public officials in signing agreements, inadequate attention to the management of agreements and weak transparency in their implementation. A Secretariat of Federal Internal Control working group established in the same year[6] concluded, among other things, that granting authorities should have the necessary human resources and capability to effectively monitor the implementation of administrative and transfer agreements. The working group findings were sent to various authorities, among them the Federal Court of Accounts.

Efforts were again initiated in 2005 to address the inadequacies of the legislative and management framework for administrative agreements by the Federal Court of Accounts.

Through this process, the Federal Court of Accounts determined that the Federal Ministry of Planning, Budget and Management should present a technical study for the implementation of online monitoring of administrative and transfer agreements. The terms of reference included making information available on: *i)* the parties to an agreement; *ii)* the member of the National Congress and budgetary amendment that allocated funds, if any, to the object of the contract; *iii)* the detailed work plan, including estimated costs per item/stage/phase; *iv)* tenders carried out with bids and data from all bidders; *v)* the status of physical implementation schedule indicating the goods purchased, services or work performed; *vi)* the name, social security number and location data of the direct beneficiaries, if any. The Federal Court of Accounts directed this issue through the Council on Transparency and Combating Corruption, an advisory body affiliated with the Office of the Comptroller General of the Union. This resulted in the promulgation of new management procedures on the use of administrative and transfer agreements, developed by the Office of the Comptroller General of the Union (see Chapter 2).[7]

The revised legal framework for transfer agreements aims to rationalise the use of agreements by public organisations through a number of restrictions. For instance, agreements with sub-national public organisations must have a minimum value of BRL 100 000 (USD 60 000; EUR 43 000). Public organisations are also prohibited from entering into agreements with organisations that have: *i)* defaulted of other administrative agreements or have inadequate qualifications; and *ii)* exceeded a certain total threshold value of partnerships, defined as a percentage of their total net income. In addition, the framework establishes: *iii)* clear rules against conflicts of interest in agreements with private not-for-profit organisations, banning agreements with organisations owned, led or controlled by public officials from the executive, legislature or judiciary, or their spouses, partners and close relatives; *iv)* a cap on the amount of resources that can be devoted to administrative expenses (5% of the value of the agreement); *v)* standard agreement clauses granting access by public officials of the awarding authority, internal and external auditors to all documents and information related to the execution of the agreement; and *vi)* discretion on the choice of dispute resolution over any differences deriving from the implementation of the agreement.

A key action in strengthening control of administrative agreements is the launch of a dedicated database registering and supporting the management of administrative and transfer agreements. Launched in September 2008, this management system allows public organisations to carry out price comparisons required for the acquisition of goods and services exceeding certain thresholds by private not-for-profit organisations. All acts and procedures related to the establishment, execution, monitoring, reporting and auditing of agreements must be recorded in the Administrative Agreement and Transfer Contract Management System (*Sistema de Gestão de Convênios e Contrato de Repasses*). This system is open to the public through the "Agreements Portal" (*Portal dos Convênios*). All not-for-profit organisations interested in entering into an agreement with a federal public organisation must be registered with the Administrative Agreement and Transfer Contract Management System. The information included in the system is detailed, and includes information on, for example, the identity of the directors or managers of the organisation, a certification of compliance with tax obligations, evidence on the technical and operational capacity, etc. Registration is valid for a period of one year. The system is being gradually implemented since 2008, with several modules already completed. As part of this implementation, training sessions have been and are being conducted for both federal managers and representatives of the organisations that are parties to the contracts.

It is expected that with the full implementation of the Management System for Agreements and Contracts with Transfers of Federal Funds, effective transparency in the use of federal funds transferred to entities under contracts will be achieved. The Administrative Agreement and Transfer Contract Management System – which is run by a Management Committee with representatives of the Secretariat of the National Treasury, the Secretariat for Federal Budget and the Secretariat for Logistics and Technology (both at the Federal Ministry of Planning, Budget and Management), as well as the Secretariat of Federal Internal Control – produces quarterly management reports providing consolidated data and disaggregated information on individual agreements.[8]

Federal Government Payment Cards

The Federal Government Payment Card was established in 1998 for the payment of promotional or reduced travel arrangements for public officials. Only in exceptional circumstances were the cards authorised for below-threshold procurement. Otherwise, officials were obliged to use Type B accounts to pay below-threshold contracts of goods and services for immediate delivery.[9] Over time this obligation was relaxed and, in 2001, the use of the cards was expanded as an alternative to Type B accounts.[10] With these changes, the use of the Federal Government Payment Card grew significantly over time from less than 50 cardholders in 2002 to approximately 10 000 in 2008 and has remained around the same level since. The total value of expenditure using the cards grew from BRL 3 million (USD 1.8 million; EUR 1.3 million) in 2002 to BRL 80 million (USD 48 million; EUR 34 million) in 2010 (see Table 3.4). The average value of the cards fell from approximately BRL 65 000 (USD 39 000; EUR 28 000) per cardholder in 2002 to BRL 8 300 (USD 5 000; EUR 3 600) in 2010.

Table 3.4. **Expenditure using Brazil's Federal Government Payment Cards**

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Amount spent, in BRL million	3.0	9.3	14.2	21.7	33.4	76.3	55.3	64.6	80.1
Number of card holders	46	224	1 187	2 812	5 202	7 445	10 080	9 766	9 671

Source: Transparency Portal of the Federal Public Administration (*www.portaldatransparencia.gov.br*).

In 2008, the Office of the Comptroller General of the Union formulated Federal Decree no. 6 370/2008 to provide greater transparency and control of below-threshold expenditure for materials and services for immediate delivery using the Federal Government Payment Card. The decision was influenced by several newspaper articles about the irregular use of the card that were identified through the Transparency Portal of the federal public administration (*www.portaldatransparencia.gov.br*) (see Chapter 2). The move by the Office of the Comptroller General of the Union also followed media reports mentioned above, a Congressional Commission of Inquiry created in March 2008 to investigate the situation; a federal minister eventually resigned over the misuse of the card. The federal decree sets rules on the use of the Federal Government Payment Cards, including prohibiting bank withdrawals, except in two cases: *i)* costs related to specific situations of the public organisation, to be internally regulated, and never exceeding 30% of the total annual expenditure of the public organisation; or *ii)* to support the peculiarities of the essential authorities within the Office of the Presidency, Federal Ministry of Finance, Federal Ministry of Health,[11] Department of Federal Police, Federal Ministry of Foreign Affairs as well as the armed forces and intelligence authorities.

Due to the transparency provided by Federal Government Payment Card and with the enactment of Federal Decree no. 6 370/2008, Type B accounts were abolished. As such, the cards have become the only option for below-procurement-threshold expenditure. In parallel, the Office of the Comptroller General of the Union instructed the internal audit units in organisations of the indirect public administration to monitor expenditure made using the Federal Government Payment Card and introduced computer-assisted audits through the Public Spending Observatory to monitor the use of the cards. The Office of the Comptroller General of the Union also issued a frequently asked question booklet containing information on Federal Decree no. 6 370/2008 for users of the cards and as a basis for citizens to exert direct social control.

In 2009, the Federal Ministry of Planning, Budget and Management created the Payment Card System (*Sistema de Cartão de Pagamentos*) and required public officials using the cards to insert data related to their purchases into the system.[12] The information to be inputted includes the invoice number of purchases, the company's identification number (*Cadastro Nacional da Pessoa Jurídica*), the date of the purchase and its value, proof of expenses with purchases made with money drawn with a Federal Government Payment Card. The system is still under development, although the module for insertion of data by holders of the cards is already being used. The system is currently being evaluated and customised in order to integrate with the Federal Government Financial Administration System.

Risk management is being introduced as a means of addressing specific vulnerabilities associated with public service delivery

Over the last five years, the Office of the Comptroller General of the Union has placed increasing emphasis on risk management as a preventive measure against misconduct and corruption. Its vision is to instil a positive risk management culture within public organisations to complement and reinforce existing management controls. To do so, the Office of the Comptroller General of the Union is developing tools to help public managers effectively manage risks in their operations. Its major activity in this regard is the development of a generic risk management methodology:

- Based upon self-assessment: an organisation must take the initiative to test its own integrity, drawing upon the knowledge and opinions of its officials. In the process, organisations reveal their own risks and the officials make recommendations on how to strengthen resilience.
- Targeted at prevention: the methodology is designed to identify the main operational weaknesses and risks as the basis for strengthening an organisation's resilience against them.
- Actionable and monitorable: it allows public managers to identify operational risks and take the necessary *ex ante* measures to safeguard public resources, provide quality services and strengthen trust in government.

Two risk management methodologies have been developed by the Office of the Comptroller General of the Union. The first, the Corruption Risk Mapping Methodology (*Metodologia de Mapeamento de Riscos de Corrupção*), was developed in 2006 in partnership with Transparência Brasil. The second, the Risk Management Methodology (*Metodologia de Gerenciamento de Risco*), was developed by the Office of the Comptroller General of the Union in 2008 and modified in 2009 following a pilot of the first methodology. The pilot of the first methodology was conducted in three federal

ministries: the Federal Ministry of Culture, the Federal Ministry of Transport and the Federal Ministry of Social Development and Fight Against Hunger. These were selected primarily because of their close working relationship with the Office of the Comptroller General of the Union. The Office of the Comptroller General of the Union plans to apply the risk management methodology in five public organisations, or divisions therein, by 2012. While the first and second methodologies are formally articulated as complementing one another, senior officials within the Office of the Comptroller General of the Union indicate that the emphasis going forward is almost solely placed on the second methodology.

In developing its methodologies, the Office of the Comptroller General of the Union has drawn upon the experience of other countries and organisations from Brazil's private sector. Officials gathered information by studying the methodologies of countries and organisations and holding meetings and seminars on the subject. Among the methodologies examined have been Argentina and Mexico (first methodology), Colombia and the State of New South Wales (Australia) (second methodology). The experiences of Chile and Hong Kong, China were also reviewed, but the Office of the Comptroller General of the Union found that their methodologies did not meet its needs. For example, the Office of the Comptroller General of the Union reported that the Chilean methodology was too focused on risk mapping as an input for external audit activities rather than an input into internal control. In developing the methodology, however, the Office of the Comptroller General of the Union did not explore the experiences of other public organisations within Brazil. This is despite annual surveys conducted by the Office of the Comptroller General highlighting that a number of federal public organisations have, since 2007, begun to introduce risk management. For example, the Institute of Social Security (*Instituto Nacional do Seguro Social*), Brazil's Intelligence Agency (*Agência Brasileira de Inteligência*), the Bank of Brazil (*Banco da Brasil*), the Asset Management Company (*Empresa Gestora de Ativos*) and Petrobras have all introduced operational risk management.

Box 3.2. **Operational risk management in Brazil's Federal Ministry of Social Security**

In 1999, the Federal Ministry of Social Security (Previdência Social Brasileira) began to conduct operational risk management activities. In 2002, it was the first organisation of the direct federal public administration to have a specific unit dedicated to risk management, although it was not until April 2003 that the Risk Management Office became part of the formal structure of the Federal Ministry of Social Security. In 2006, the Office was expanded to the Strategic Research and Risk Management Advisory Unit (*Assessoria de Pesquisa Estratégica e de Gerenciamento de Riscos*), responsible for all operational risk analysis and intelligence gathering for the Federal Ministry of Social Security. The unit is located under the Executive Secretary (deputy minister) of the Federal Ministry of Social Security. It is staffed by 180 officials spread across Brazil's 26 states and 25 officials in Brasília.

The unit produces information related to risk management and fraud of social security beneficiaries for the Federal Ministry of Social Security. It uses traditional audit techniques as well as data mining and cross checks the social security database with other government systems including the Federal Government Financial Administration System, Integrated Human Resource Administration System, National Automobile Registry (*Registro Nacional de Veículos Automotores*) and government credit orgnisations (*e.g.* SERASA). To support its activities, the Strategic Research and Risk Management Advisory Unit has developed a Monitoring and Analysis Information System (*Monitoramento e Análise das Informações da Previdência Social*) to create a fraud typology and allow management follow-up of investigations.

After identifying possible failures of internal control within the Federal Ministry of Social Security, the unit works in partnership with the area involved to mitigate risks. Many of the earlier problems were technological in nature and required major investments by the Social Security Technology and Information Company (Dataprev). After recommendations are issued, monitoring is conducted to verify whether the risk increases or decreases as a result of the recommendation.

There were over 11 600 investigations into fraud between 1999 and May 2010. The creation of the Strategic Research and Risk Management Advisory Unit resulted in significant growth in the number of investigations into fraud. In 2005 (the year before the creation of the unit) there were 68 investigations. In 2006, there were over 1 700 investigations. The number of investigations peaked in 2008 with over 5 100. As a consequence of the increase in investigations since 2006, the ratio of ongoing to closed cases has increased substantially from around 15-20% every year between 1999 and 2005 to over 50% since 2006. There is great variation, however, between different states: in Sergipe and Goiás, 98% and 83% of cases were closed, respectively; in Alagoas and Acre only 2% and 0%, respectively. In São Paulo and Rio, where the number of investigations are the highest, the per cent of cases closed is 11% and 28%, respectively.

The Strategic Research and Risk Management Advisory Unit also works in close co-operation with the Department of the Federal Police (*Departemento Polícia Federal*) and the Office of the Federal Public Prosecutor (*Ministério Público Federal*). Joint investigations of social security fraud between the Federal Police and the Office of the Federal Public Prosecutor have increased from 10 in 2003 to an average of 40 per year since 2006. Much of these joint actions have given rise to imprisonment of corrupt citizens. Nearly 20% of the arrests made so far are of public officials. Data suggests that as of 2003, over 500 public sector officials had been fired and over 300 imprisoned since 2003 due to Strategic Research and Risk Management Advisory Unit investigations. Estimates suggest that there was an estimated loss of BRL 462 million (USD 276 million; EUR 198 million) between 2006 and 2010.

Source : Strategic Research and Risk Management Advisory Unit, Federal Ministry of Social Security.

Table 3.5. **Office of Comptroller General of the Union 2006 risk mapping methodology**

Questions relating to information necessary for decision making
1. Is the information necessary for the decision defined in legislation or documented internal rules?
2. Is the information necessary for the decision built based on a methodology and specific criteria (*e.g.* assessment of prices for purchase based on market or cost analysis)?
3. Is the information necessary for the decision supported by structured data collection (*i.e.* adequate sources or pre-defined procedures and criteria are used)?
4. Is the information necessary for the decision consistent?
5. Do decision makers have all the information available at the moment of making the decision?
Questions relating to decision-making points
6. Do decision makers possess the necessary knowledge to make decisions in accordance with applicable legislation and rules?
7. Are there organisations/units and mechanisms for the control and supervision of the decision?
8. Are there mechanisms allowing access by interested parties to the motivation and the content of the decision?
9. Is there a historical record of the decision kept within the authority and/or other institutions?
10. Is the decision accompanied by criteria permitting the consideration of interested parties or beneficiaries in the process?
11. Is the decision driven by the objective of ensuring the economic efficiency of the process?
12. Do citizens participate in the decision-making process? *i)* Is there a public consultation regarding the adoption of the decision? *ii)* Is the focus of the decision considered in the evaluation of the results of public consultations? *iii)* Are the results of public consultations taken into account in the adoption of the decision?
13. Is there control over contact between the decision maker and the beneficiaries or interested parties?
14. Do similar processes come to a decision within one year?
15. Can the decision be reviewed by another executive authority (*i.e.* appeal)?
16. Is the decision adopted on the basis of available information?
Questions relating to decisions
17. Is there a historical account of the results of the decision?
18. Does the result of the decision contribute to the improvement of the next decision or the final result of the process?
19. Are the requirements for partial results spelled out in legislation or internal rules?
20. Is there visibility regarding the economic and social implications of the decision?
21. Are there indicators to evaluate the time required for the decision?
22. Is there a control mechanism regarding the list of beneficiaries and interested parties in past decision-making processes (*e.g.* do they always get exemptions, etc.)?
23. Is there an evaluation of the final results of the process based on indicators or criteria measuring its effectiveness?

Source: Office of the Comptroller General of the Union.

The first attempt at developing a comprehensive methodology to identify and address corruption risks within the Brazilian public administration took place in 2006. It is comprised of five steps, from identification of organisational working processes to evaluation of risks: *i)* identifying the organisation's work processes; *ii)* selecting work processes considered "at risk" to be mapped; *iii)* defining the variables influencing each business process; *iv)* mapping the decisions for each process; *v)* mapping the risks in each decision point. For each decision-making point, three series of questions are to be asked relating to: *i)* the information used in or required for each decision-making point; *ii)* the decision-making points themselves; and *iii)* the decision results (see Table 3.5). According to the first methodology, processes are considered at risk if they involve either the direct purchase of goods or services, confer rights or benefits on citizens (*e.g.* issuance of permits, concessions, etc.), transfer resources to sub-national public or private not-for-profit organisations, or involve the imposition of administrative sanctions.

The responses to these questions are coded 1 (yes) or 0 (no). The higher the score, the lower the exposure risk to corruption.

The pilot of the first methodology highlighted a number of difficulties but also provided some unique insights into risk management. It focused solely on public procurement of off-the-shelf goods and common services using reverse auctions, rather than addressing more complex procurement objects and processes. In other words, it was a narrowly defined pilot that would not test the external validity of the methodology in identifying and managing risks within other areas of operational management. Foremost among the challenges identified was that the methodology was considered too academic in nature and focused on describing decision-making processes rather than assessing actual risk and developing mitigating measures. Despite these challenges, the application of the pilot methodology by the Federal Ministry of Culture identified a breakdown in communication between officials responsible for preparing and conducting the reverse auctions and those in charge of stock controls. In response to these difficulties, the Office of the Comptroller General of the Union made two main adjustments to its risk management methodology: *i)* focusing on activities (*atividades*) rather than processes; and *ii)* shifting from risk identification to risk management. Activities are the specific tasks of each management function (see Table 3.6).[13] Risks related to information management are not currently included in the methodology. Protecting information, including citizens' privacy, is a core value of any public sector organisation – and integrity management should contribute to this value. A number of OECD member countries have begun to introduce privacy impact assessments within their decision-making processes (*e.g.* Australia, Canada, the Netherlands, New Zealand, Norway and the United Kingdom).

Table 3.6. **Office of Comptroller General of the Union 2010 risk management methodology: management activities**

Management area	Activities
Human resource management	Granting of compensation, benefits, indemnities and advantages Hiring, mobility and dismissal of staff Consultant retention Granting/modification of retirement and pensions Resolution of administrative disciplinary procedures Training and development policy
Procurement management	Procurement procedures (tendering and exemptions) Contract management
Budget and financial management	Preparation/modification of budget proposal Budget execution Management of available funds and additional funding Agreement management
Asset management	Use and inventory of assets Sale, donation and transfer of movable and immovable assets Use of means of transport
Service delivery	Planning-designing programme/action goals and objectives Income transfers Surveillance and/or imposition of penalties Granting of benefits, incentives and financing Regulation Service to the public Evaluation of programme's/action's effectiveness, efficiency and costs

Source: Office of the Comptroller General of the Union.

The methodology itself is divided into five steps: *i)* selection of the most vulnerable activities; *ii)* evaluation of existing control measures for the most vulnerable activities; *iii)* formulation of preventive measures; *iv)* implementation of preventive measures; and *v)* monitoring the most vulnerable activities. The first step aims to provide the institution with an overview of the activities carried out in each of its management areas. For this purpose, the methodology establishes 12 vulnerability indicators (*indicativos de vulnerabilidade*) relating to factors mostly unrelated to management that influence the likelihood of corruption in the performance of a given activity (see Table 3.7). Each indicator has a pre-defined set of responses options, scored between 1 (low vulnerability) and 3 (high vulnerability). The final score determines the degree of risk that a given activity presents and whether further investigation into additional management controls is required. The remaining stages of the methodology focus on formulating, implementing and monitoring preventive measures, including the preparation of an action plan (*plano de ação*) to strengthen the control measures identified (model forms are provided). Further, it advises that the whole process be repeated every two years. Some indicators included in the 2010 methodology may require re-consideration. For example, by the end of 2010 all federal ministries were expected to have their own ombudsman unit (see Chapter 2), which may render Indicator 4 less significant (*i.e.* "are there communication mechanisms at the organisation for citizens to submit complaints and claims regarding the activities performed by the organisation"). As discussed earlier in this chapter, many activities are supported by information systems, which may render Indicator 9 less significant (*i.e.* "is there a computerised system at the federal level to implement the activity").

Table 3.7. **Office of Comptroller General of the Union 2010 risk management methodology: vulnerability indicators**

Indicators	Scoring
1. How often is the activity subject to audit/inspection by audit authorities (*i.e.* Federal Court of Accounts, Office of the Comptroller General of the Union)?	1. Annually 2. Every two years 3. Every three years or more, or never subject to audit/inspection
2. Have wrongdoing and/or irregularities been detected in the last two audits?	1. There have been no irregularities or wrongdoing 2. Only formal issues or irregularities were detected 3. Serious flaws, fraud, misuse and/or irregularities were detected, or the activity is never audited
3. Are there instruments providing for public consultation of information regarding the activity?	1. Information is available to the public in electronic media that allow free or easy access 2. The information is publicly available only in print or in electronic format with medium/difficult access 3. The information is offered only upon request by the person concerned or is not available to the public
4. Are there communication mechanisms at the organisation for citizens to submit complaints and claims regarding the activities performed by the institution?	1. The organisation has mechanisms for receiving complaints and claims, and these are often acted upon 2. The organisation has mechanisms for receiving complaints and claims, but these are rarely acted upon 3. The organisation does not have mechanisms for receiving complaints and claims
5. Does the activity have a high degree of deconcentration (*i.e.* different units of the same organisations) and/or decentralisation (to states, the Federal District, municipalities)?	1. There is no deconcentration or decentralisation 2. The activity is partially deconcentrated or decentralised 3. The activity has a high degree of deconcentration or decentralisation
6. What degree of political interference is there in carrying out the activity?	1. There is no possibility of political interference 2. There is possibility of interference in some stages of the activity 3. There is possibility of interference in many or all stages of the activity

Table 3.7. **Office of Comptroller General of the Union 2010 risk management methodology: vulnerability indicators** *(cont'd)*

Indicators	Scoring
7. Does the activity involve funds derived from loan agreements with international organisations (*e.g.* Inter-American Development Bank, World Bank)?	1. No 2. It does, in part 3. It does, predominantly
8. Are laws and/or guidance manuals clear and sufficient to perform the activity?	1. Yes, the rules and/or manuals are clear and sufficient 2. Current rules and/or manuals generate some ambiguity in interpretation, presenting some difficulties in their application 3. Current rules and/or manuals generate many interpretative doubts, compromising the performance of the activity
9. Is there a computerised system at the federal level to implement the activity (*e.g.* Federal Government Financial Administration System, Integrated Human Resource Administration System, Integrated General Services Administration System)?	1. There is a federal computerised system, and its use is mandatory for the implementation of the activity 2. There is a federal computerised system, but its use is optional for the implementation of the activity 3. There is no federal computerised system for the implementation of the activity
10. To what extent does the activity have an impact on the destination or use of budget allocations, financial resources, or assets?	1. The activity impacts on the destination or use of a low volume of budget allocation, financial resources or assets 2. The activity impacts on the destination or use of a medium volume of budget allocation, financial resources or assets 3. The activity impacts on the destination or use of a high volume of budget allocation, financial resources or assets
11. To what extent may the activity result in the granting of benefits or the imposition of penalties on recipients?	1. The activity may result in the granting of benefits or the imposition of penalties producing a small impact on the recipient 2. The activity may result in the granting of benefits or the imposition of penalties producing a medium impact on the recipient 3. The activity may result in the granting of benefits or the imposition of penalties producing significant impact on the recipient
12. How should the activity be performed?	1. The executor must strictly comply with the provisions of the applicable legislation at all stages of the activity 2. The executor must comply with the provisions of the applicable legislation in most of the steps, but he/she can make assessments and take his/her own decisions regarding some aspects 3. The executor, while required to follow legal requirements, can make assessments and take his/her own decisions regarding various aspects

Source: Office of the Comptroller General of the Union.

Professional and independent internal audit

Internal audit is a key supporting role of any public organisation's system of internal control. It provides decision makers and public managers with an independent and objective appraisal of the functioning of management control underpinning service delivery and programme performance. Internal audit findings and recommendations support informed and accountable decision making in relation to managing operational risks, enhancing effectiveness and achieving value for money. Moreover, internal audit allows decision makers and public managers to target their attention to areas in need of improvement. In order to add value, however, internal audit findings and recommendations must be adequately and promptly acted upon by decision makers and public managers. The role of internal audit is evolving in OECD member countries from an assessment of compliance with procedures and rules to a strategic partner in the management of public organisations. Although internal auditors can be a valuable resource, they should not be a substitute for the individual responsibility of public

managers to implement a risk-based approach to internal control. In this context, internal auditors are concerned with restoring citizen and investor confidence in government.

Internal audit highly centralised within the direct public administration as a means to strengthen its professionalism and independence

Internal audit for Brazil's direct federal public administration is highly centralised within the Secretariat of Federal Internal Control. This centralisation, implemented in 2000/2001, represents a deliberate policy shift, though its roots can be traced back to the early 1990s. Previously, all organisations of the direct federal public administration had their own Secretariat of Internal Control (*Secretaria de Controle Interno*). These secretariats were responsible for auditing not only the administrative units of organisations of the direct federal public administration, but also those of the agencies and foundations under the direct supervision of the respective organisations. State-owned and mixed-capital enterprises have always had their own internal audit functions. The policy shift regarding internal audit was driven by concern over the independence of the Secretariats of Internal Control from undue influence of high officials, as articulated by an audit report by the Federal Court of Accounts in 1992. This triggered a centralisation during the 1990s, with the Secretariats of Internal Control progressively losing significance as the Secretariat of Federal Internal Control consolidated its influence. The Secretariats of Internal Control within organisation of the direct public administration were discontinued altogether in 2001.

With the centralisation of internal audit within the direct federal public administration, Secretariats of Internal Control have been replaced by the Secretariat of Federal Internal Control and special advisors on internal control (*Assessor Especial de Controle Interno*). Each organisation of the direct federal public administration is supported by a dedicated "internal audit division" within the Secretariat of Federal Internal Control. These divisions have a presence in both the capital of Brasília and each of Brazil's 26 states. In cases of federal ministries with particularly large or complex functions (*e.g.* the Federal Ministries of Finance and Education), there are two internal audit divisions within the Secretariat of Federal Internal Control. In other cases, multiple federal ministries are grouped into a single division, (*e.g.* the Federal Ministries of Tourism and Sports and the Federal Ministries of Agriculture and Fisheries) (see Table 3.9). Within the regional units of the Secretariat of Federal Internal Control, it is also common for federal ministries to be grouped together within the same internal audit divisions.

Table 3.8. **Level of centralisation of internal audit within the direct public administration in Brazil and select countries**

Central government

Centralised	Decentralised
Brazil, Portugal,[1] Spain[2]	Argentina,[3] Australia, Canada, Chile,[4] France, Germany, Italy, Japan, Korea, Mexico,[5] South Africa, United Kingdom, United States[6]

Notes:

1. Portugal: General Inspectorate of Finance (*Inspeção Geral de Finanças*) is responsible for: financial system, value for money and information and communications technology audits; reviewing performance evaluation; and establishing standards for government agency finance. Its mandate covers all central departments and agencies, local departments and agencies, state- and municipal-owned enterprises, and all private organisations financed by national or European Union funds.

2. Spain: General Controller and Accounting Directorate (*Intervención General de la Administración del Estado*), except for the tax administration.

3. Argentina: each ministry has an Internal Audit Unit, under the technical oversight of a central internal audit agency reporting to the presidency, the Internal Audit Agency of the Public Administration (*Sindicatura General de la Nacion*).

4. Chile: internal auditors operate in all 190 services (*i.e.* ministries, agencies and public enterprises). The General Government Internal Audit Council, created in 1997, serves as an advisory authority to the executive branch and conducts audits of information databases and systems within ministries.

5. Mexico: each organisation has an internal control office, an operational extension of the Ministry of Public Administration (*Secretaría de la Función Pública*). The Ministry of Public Administration appoints the head of the internal control offices within public organisations to preserve the independence of control.

6. United States: there are 69 federal Offices of Inspectors General who share information and co-ordinate through the Council of Inspectors General on Integrity and Efficiency.

Source: World Bank/IADB (2007), *Argentina, Country Financial Accountability Assessment*; World Bank, Washington, D.C.; World Bank/IADB (2005), *Republic of Chile, Country Financial Accountability Assessment*; World Bank, Washington, D.C.; OECD (2010), *OECD Journal on Budgeting, Volume 2009 Supplement 1: OECD Review of Budgeting in Mexico*, OECD Publishing, Paris, doi: 10.1787/budget-v9-sup1-en; OECD (2008), *OECD Budget Review of Portugal*, OECD Publishing, Paris; IMF (2005), "Spain: Report on the Observance of Standards and Codes – Fiscal Transparency Module", *IMF Country Report*, No. 05/58, IMF, Washington, D.C.; *www.ignet.gov* for the United States.

Internal audit within Brazil's direct federal public administration does not fall into the typical typology of internal audit. It is not conducted in-house, as demonstrated by the centralised role of the Secretariat of Federal Internal Control. It is not outsourced with in-house management, as the special advisors on internal control do not have a specific management function of the dedicated internal audit team responsible for their ministry within the Secretariat of Federal Internal Control. Nor is it fully outsourced, which would imply that organisations of the direct federal public administration would have a quasi-contractual arrangement with the Secretariat of Federal Internal Control for the audit services that it provides.[14] The Office of the Comptroller General of the Union considers that there are a number of benefits from the centralisation of internal audit for organisations of the direct federal public administration. These include: *i)* ensuring independence of audit work; *ii)* achieving standardisation and quality control of work; *iii)* promoting knowledge management; *iv)* contributing to the development and evolution of the career of finance and control officials; and *v)* facilitating an integrated approach to evaluation of government programmes involving more than one federal ministry. Moreover, the Office of the Comptroller General of the Union considers that linking dedicated divisions to a specific federal ministry, allows: *i)* better understanding of federal programmes and activities specificities; *ii)* continuous monitoring of events that have an impact on management; and *iii)* improved relations with public managers.

Table 3.9. **Organisation of the Secretariat of Federal Internal Control departments and divisions**

Departments	Divisions
Economic	Federal Ministry of Finance I[1] Federal Ministry of Finance II[2] Federal Ministry of Planning, Budget and Management Federal Ministry of Development, Industry and Trade
Social	Federal Ministry of Social Development and the Fight Against Hunger Federal Ministry of Justice Federal Ministry of Health Federal Ministry of Education I[3] Federal Ministry of Education II[4]
Infrastructure	Federal Ministry of the Environment Federal Ministry of Mines and Energy Federal Ministry of Science and Technology Federal Ministry of Transport Federal Ministry of Cities Federal Ministry of National Integration
Production and technology	Federal Ministries of Agriculture, Fisheries and Aquaculture (within one division) Federal Ministry of Agrarian Development Federal Ministry of Tourism Federal Ministries of Sports and Culture (within one division) Federal Ministry of Communications
Employment and social security	Federal Ministry of Social Welfare Federal Ministry of Labour and Employment Social Services System ("System S")[5] Personnel Audits and Special Investigation of Accounts (within one division)

Notes:

1. The division Federal Ministry of Finance I is responsible for auditing administrative units and organisations of the indirect administration (*e.g.* agencies, foundations, state-owned and mixed-capital enterprises) that are under the authority of the Federal Ministry of Finance, *e.g.* Bank of Brazil, Federal Savings Bank, etc.

2. The division Federal Ministry of Finance II is responsible for auditing, among others, administrative units of the direct administration that are under the authority of the Federal Ministry of Finance, both in Brasília and Brazil's 26 states, *e.g.* Secretariat of Federal Revenue, tax courts, etc.

3. The division Federal Ministry of Education I is responsible for auditing, among others, programmes related to education policy management, graduate research and universities.

4. The division Federal Ministry of Education II is responsible for auditing, among others, programmes related to general literacy, vocational training and youth inclusion.

5. Social Services System ("System S") comprises para-statal organisations that play a specific role in the training and welfare of employees of companies from some sectors of industry, commerce and services, agriculture and livestock. These specific organisations were created by the government, but are not state-owned enterprises or agencies. Their financial resources are collected through compulsory contributions made by private companies as well as from the Social Security system in general. Although the System S does not execute public policies, it supports broader social goals.

Source: Secretariat of Federal Internal Control, Office of the Comptroller General of the Union.

Internal audit within Brazil's direct federal public administration does not fall into the typical typology of internal audit. It is not conducted in-house, as demonstrated by the centralised role of the Secretariat of Federal Internal Control. It is not outsourced with in-house management, as the special advisors on internal control do not have a specific management function of the dedicated internal audit team responsible for their ministry within the Secretariat of Federal Internal Control. Nor is it fully outsourced, which would imply that organisations of the direct federal public administration would have a quasi-contractual arrangement with the Secretariat of Federal Internal Control for the audit services that it provides.[15] The Office of the Comptroller General of the Union

considers that there are a number of benefits from the centralisation of internal audit for organisations of the direct federal public administration. These include: *i)* ensuring independence of audit work; *ii)* achieving standardisation and quality control of work; *iii)* promoting knowledge management; *iv)* contributing to the development and evolution of the career of finance and control officials; and *v)* facilitating an integrated approach to evaluation of government programmes involving more than one federal ministry. Moreover, the Office of the Comptroller General of the Union considers that linking dedicated divisions to a specific federal ministry, allows: *i)* better understanding of federal programmes and activities specificities; *ii)* continuous monitoring of events that have an impact on management; and *iii)* improved relations with public managers.

*Internal audit within the indirect federal public administration (*i.e. *agencies, foundations, state-owned and mixed-capital enterprises) is decentralised*

Federal Law no. 10 180/2001 on the organisation of the federal planning, budget, financial management, accounting and internal control systems of the federal public administration requires all organisations of the indirect public administration to establish their own internal audit units. This requirement was introduced in 2001 as part of the restructuring of the internal audit function of the federal public administration. Previously, state-owned and mixed-capital enterprises were the only organisations of the indirect public administration obliged to have their own internal audit unit. Prior to 2001, agencies and foundations were audited by the Secretariat of Internal Control located in the federal ministry with responsibility for supervision of their functions and activities. Internal audit units within organisations of the indirect federal public administration are linked to the board of directors or head of the organisation, as defined in their respective establishing legislation. The heads of internal audit units are selected by the board of directors or head of the organisation but, as in the case of the special advisors on internal control, must be approved by the Comptroller General of the Union.

There is select decentralisation and use of collaborative internal audit within the direct federal public administration

While Brazil is classified as having a centralised internal audit function within the direct public administration, variations do exist within this model (see Table 3.10). Select organisations of the direct public administration have their own internal audit units (*i.e.* decentralised internal audit service). These include the Office of the President of the Republic (which also audits the Office of the Comptroller General of the Union) and the Federal Ministries of Foreign Affairs and Defence.[16] The Internal Control Secretariat of the Office of the President of the Republic audits 27 public organisations located under the Office of the President of the Republic, accounting for BRL 10.3 billion in 2010 (USD 5.8 billion; EUR 4.4 billion) in annual government expenditure. The internal audit units within the Federal Ministries of Foreign Affairs and Defence audit more than 200 and 400 administrative units, respectively. The decision to maintain a Secretariat of Internal Control in these organisations reflects the nature of their functions and state security. The 2010 budgets of the Federal Ministries of Foreign Affairs and Defence were BRL 2.1 billion (USD 1.2 billion; EUR 0.9 billion) and BRL 58.2 billion (USD 33 billion; EUR 25 billion), respectively

Table 3.10. **Brazil's three models of internal audit in the direct federal public administration**

Centralised (under the Secretariat of Federal Internal Control)	Decentralised (in ministries or functional secretariats)	Collaborative (i.e. Secretariat of Federal Internal Control, Federal Court of Accounts)
Agrarian Development	**Pre-2001 centralisation of internal audit**	Specific programmes (e.g. Family Grant Programme)
Agriculture	Office of the President	
Cities	Defence	
Communications	Foreign Affairs	
Culture	Unified Health System (DENASUS)	
Development and Trade		
Education	**Post-2001 centralisation of internal audit**	
Environment	Secretariat of Federal Revenue	
Finance		
Fisheries		
Justice		
Labour and Employment		
Mines and Energy		
National Integration		
Planning, Budget and Management		
Science and Technology		
Social Development and Fight Against Hunger		
Transport		

The Unified Health System (*Sistema Único de Saúde*) under the Federal Ministry of Health also has its own internal audit department (*Departmento Nacional de Auditoria do Sistema Único de Saúde*, DENASUS) since 1986.[17] The existence of a dedicated internal audit unit is attributed to the size and complexity of the system: it includes over 5 800 hospitals, of which nearly 3 500 are private, 2 100 are public and 150 are university hospitals (see Case Study 3). The Secretariat of Federal Revenue General Co-ordinator of Internal Audit is the first organisation of the direct federal public administration to have its own internal audit unit since the centralisation of internal audit within the Secretariat of Federal Internal Control in 2001. The Secretariat of Federal Revenue has exclusive authority to levy and administer taxes on personal income, corporate income, payroll, wealth, foreign trade, banking and finance, rural property, hydroelectric and mineral resources (see Case Study 1).

Some specific high-level programmes have a dedicated oversight and control network (*i.e.* collaborative audit) involving various public authorities. Such a network was established in January 2005 to systemise and co-ordinate oversight and controls over the Family Grant Programme. The programme covers 12.6 million households (with an average of 4 persons per household, its coverage spans approximately one-quarter of Brazil's population of 190 million citizens), and accounts for 5% of the federal government's non-capital expenditure, or 0.84% of total government expenditure. The creation of the network involved a formal agreement of co-operation among the Office of the Comptroller General of the Union, the Federal Court of Accounts (and its sub-national counterparts) and the Federal Public Prosecutors with the Federal Ministry of Social Development and the Fight Against Hunger. The control activities of the network are in addition to the regular activities of the respective organisations. Furthermore, the design of the Family Grant Programme includes citizens within the programme implementation arrangements incorporates, in a *de facto* manner, civil society into this network (see Case Study 2).

The Secretariat for Federal Internal Control plays a critical role in setting internal audit standards and co-ordinating internal audit activities

The Secretariat of Federal Internal Control Department of Planning and Co-ordination provides guidance on standards and rules for internal audit units within organisations of the indirect federal public administration. For example, Secretariat of Federal Internal Control Normative Instruction no. 1/2001 outlines the functions of internal audit units, including examining the lawfulness and legitimacy of actions in accordance with different administrative systems (*e.g.* financial management, human resources, asset management, etc.).

Manuals issued by the Department of Planning and Co-ordination provide orientation on the procedures to be followed during the audit and the preparation of the audit report. Different manuals correspond with the various types of audits (*i.e.* there are separate manuals for government programme audits, financial audits, random audits, special investigation of accounts, etc.). They define the steps of work as well as the responsibilities of the internal audit teams, the audit co-ordinator and audit supervisor. For example, the manual for government programme audits defines the following steps to build evaluations: *i)* mapping public policies (*i.e.* macro-objectives, resources, organisational responsibilities); *ii)* prioritising governmental programmes (*i.e.* based on materiality, relevance and critical factors); *iii)* prioritising the actions of each programme according to criteria defined with strategic bases; *iv)* situational reporting (*i.e.* objectives, goals, delivery mechanisms, target users/beneficiaries); *v)* strategic planning (*i.e.* critical points – better option among the several possibilities of control); and *vi)* operational planning (*i.e.* division of labour, stages, procedures, control techniques). These manuals are developed through a process of internal consultation with finance and control analysts and technicians – the career group constituting the bulk of Office of the Comptroller General of the Union officials and the special advisors on internal control.

In addition, the internal audit units in organisations of the indirect federal public administration are formally subject to two types of monitoring by the Secretariat of Federal Internal Control. First, internal audit units are required to submit an Annual Plan of Internal Audit Activities (*Plano Anual de Atividades de Auditoria Interna*) and an Annual Report of Internal Audit Activities (*Relatório Anual de Atividades de Auditoria Interna*) to the Secretariat of Federal Internal Control as a basis for evaluation. Second, internal audit units of organisations of the indirect federal public administration are subject to peer review by other internal audit bodies once every three years.

The Annual Plan of Internal Audit Activities is submitted for review to the Secretariat of Federal Internal Control before end-October, and it reports back by end-January.[18] The plan includes information on: *i)* planned internal audits and their objectives; and *ii)* planned institutional development and capacity building actions. Within 20 days of receipt of the plan, the Secretariat of Federal Internal Control issues comments on the planned activities and recommends additional internal audit actions, as appropriate. The plans are subsequently finalised and approved by the heads of the respective federal public organisations before the end of December, and then shared with the Secretariat of Federal Internal Control. The Annual Report of Internal Audit Activities includes: *i)* a description of actions undertaken by the internal audit unit; *ii)* a record of internal audit activities conducted during the year, their recommendations or determinations; *iii)* information on developments that have impacted on internal audit actions; and *iv)* information on institutional development and capacity building activities. The content of these reports is protected and subject to banking, tax or business confidentiality. The

number of Annual Plans of Internal Audit Activities and Annual Reports of Internal Audit Activities received by the Secretariat of Federal Internal Control was not available to the OECD.

The Secretariat for Federal Internal Control notes that the peer review was included in the internal audit manual in 2001 as an aspiration in line with international good practice. The objective of the peer review is to assess if the internal audit unit under review is effectively performing its functions. However, to date, no peer reviews of internal audit units have been conducted. Senior officials within the Secretariat for Federal Internal Control informed the OECD Secretariat that peer reviews remain a goal, but no specific date has been set for their introduction.

As noted above, the Commission for Co-ordination of Internal Control is an advisory body to the internal control system of the federal public administration. The commission is made up of officials from the Office of the Comptroller General of the Union together with one special advisor for internal control and two representatives of internal audit units from organisations of indirect public administration, appointed for a one-year term by the Comptroller General of the Union. However, the commission has not convened since 2003. In some regards, this development reflects the current composition of the commission and the centralisation of the internal audit function within the direct federal public administration. The Office of the Comptroller General of the Union could assess the potential role of the Commission for Co-ordination of Internal Control as a mechanism for exchanging experiences on internal audit, in particular between the direct and indirect federal public administration. If the commission was re-activated, the Office of the Comptroller General of the Union could assess its composition. The commission may benefit from the participation of more internal audit units from organisations of the indirect public administration, internal audit units of sub-national governments, the national professional internal audit association and the Federal Court of Accounts.

Performance audits of federal public organisations and the sub-national government's delivery of federal programmes are an increasing focus

Over time, audits of government programmes grew substantially in number, from 113 to 2 000 per year – or from 1% to nearly 20% of total audit activities – between 2005 and 2010 (see Table 3.11 and Figure 3.4). Programme audits combine analysis of financial, non-financial and compliance activities, with particular attention to performance against targets set in the Pluri-Annual Plan and Annual Budget Law. Random audits comprise a large share of the annual audit activities of the Secretariat of Federal Internal Control, varying between 30% and 70% between 2005 and 2010. Random audits examine the implementation of federal programmes by sub-national governments. Municipalities and states are selected by the Federal Savings Bank (*Caixa Econômica Federal*), using the national lottery system, verifying financial and non-financial information, compliance and effectiveness.[19] During this same period, financial audits remained at about 10% of all audits conducted by the Secretariat of Federal Internal Control. Annual financial audits verify information provided by federal public organisations as input into the external rendering of accounts. Public organisations are selected for audits by the Federal Court of Accounts, with the participation of the Secretariat of Federal Internal Control, based on materiality and relevance. The audits aim to ensure the regularity of accounts, and verify financial reporting of federal budgetary funds and asset management.

Table 3.11. **Secretariat of Federal Internal Control audits**

By audit type, per year

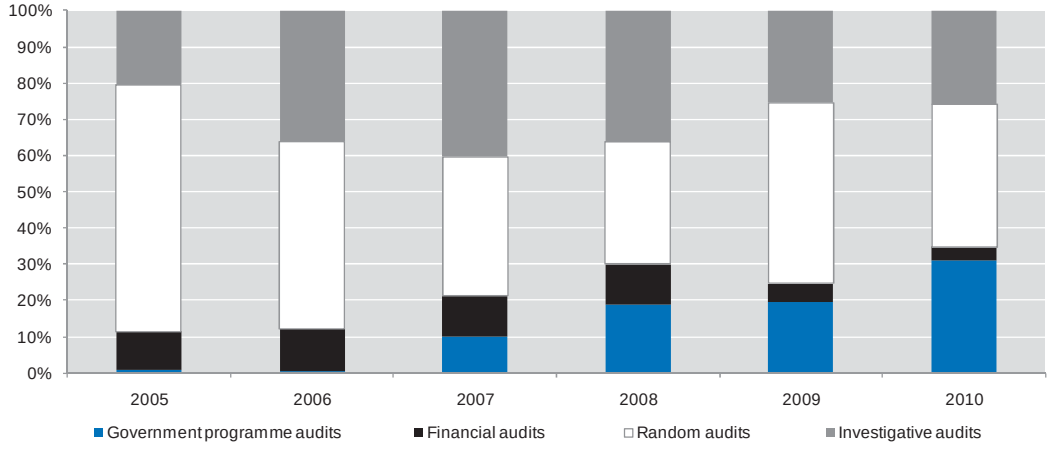
Type	2005	2006	2007	2008	2009	2010
Government programme audits	113	56	1 152	2 039	1 979	4 380
Financial audits, of which related to:	1 232	1 316	1 322	1 180	519	515
Direct public administration	943	995	987	838	286	251
Indirect public administration	289	321	335	342	233	264
Random audits	7 974	5 750	4 462	3 622	5 063	5 520
Investigative audits, of which from:	2 401	4 022	4 695	3 899	2 572	3 655
Office of Federal Public Prosecutors	N/A	414	638	970	1 023	1 031
Federal Ministry of Justice	N/A	153	296	329	444	662
Offices of state public prosecutors	N/A	97	136	117	101	109
Federal Court of Accounts	N/A	19	26	68	102	88
National Congress	N/A	98	76	49	38	33
Office of the President of the Republic	N/A	9	1	4	3	1

Notes: In addition, the Secretariat of Federal Internal Control is responsible for conducting audits to evaluate the performance of agreements with international financial institutions and other donor organisations. In recent years, its approach has evolved considerably from one process to a simple accounting audit approach for evaluating goals and objectives of the government action benefit from these resources. Between 2003-08, the Office of the Comptroller General of the Union conducted over 2 200 audits of more than 1 000 projects, averaging around one-third of total federal projects audited annually. The results of the audits are sent to the Secretariat of the National Treasury of the Federal Ministry of Finance, the Secretary of International Affairs of the Federal Ministry of Planning, Budget and Management and the Brazilian Co-operation Agency of the Federal Ministry of Foreign Affairs, who are responsible for primary supervision and monitoring of these projects.

Source: Secretariat of Federal Internal Control, Office of the Comptroller General of the Union.

Figure 3.4. **Secretariat of Federal Internal Control audits**

% of total audits



Source: Secretariat of Federal Internal Control, Office of the Comptroller General of the Union.

A fourth category of audits – investigative audits – is based on issues of integrity attributed to concerns raised in other audit activities and external requests. Such requests may come from the management of individual public organisations, the Civil House of the Office of the President of the Republic, the Department of Federal Police, the Office

of the Federal Public Prosecutor, members of the National Congress, the Federal Court of Accounts or citizens. These audits are primarily aimed at reviewing issues of legality and integrity. The results are published in the Annual Audit Report on Accountability and are sent to the Federal Court of Accounts, Department of Federal Police and Office of the Federal Public Prosecutors. During 2008, over 3 200 complaints or requests for investigations were received by the Secretariat of Federal Internal Control, of which nearly 2 500 were audited. The gap between the number of complaints received and those that are addressed (25%) was due, in many cases, to a lack of data or consistency of the information provided through a preliminary review of information. Some 900 inspections were completed in 2008, spanning 348 municipalities and involving a number of federal programmes within, among others, the Federal Ministries of Cities, Health, Education, Social Development and Fight Against Hunger.

New control techniques of federal public organisations and the sub-national government's delivery of federal programmes have been a recent focus. Programme audits are prioritised according to issues of materiality (*i.e.* size of the budget), relevance (*i.e.* contribution to a public organisation's mission) and operational risks. These can receive a maximum of one-third of the total weighting. Table 3.12 provides an illustration of the prioritisation of internal audit activities for 2011. It shows that the 2014 FIFA World Cup and 2016 Olympic Games have already become priority topics for the Secretariat of Federal Internal Control.

Table 3.12. **2011 programme audit prioritisation matrix of Secretariat of Federal Internal Control**

Criteria	Range of possible scores
1. Materiality	
1.1 The estimate of total funds allocated to the programme	0-50
2. Relevance	
2.1. Inclusion within the Growth Acceleration Programme (*Programa de Aceleração do Crescimento*); the Education Development Plan (*Plano de Desenvolvimento da Educação*); or the Social Agenda (*Agenda Social*)	0-20
2.2. Inclusion within the Budget Framework Law/Millennium Development Goals/Ministerial Strategic Orientation/external financing (loans, grants, etc.)	0-5
2.3. Inclusion within the 2014 FIFA World Cup and 2016 summer Olympics activities	0-25
2.4. Programme typology	0-10
3. Operational risk	
3.1. Evaluation of performance	0-10
3.2. Complaints received	0-9
3.3. Judgement/opinion on accounts	0-9
3.4. Risk objects and areas	0-5
3.5. Human resource policy	0-7
3.6. Decentralised implementation	0-6
3.7. Performance of direct social control	0-3
3.8. Management control	0-4

Source: Secretariat of Federal Internal Control, Office of the Comptroller General of the Union.

The creation of the random audit programme in 2003 constituted a fundamental change in the approach to auditing the implementation of federal programmes by local governments that first began in 1995. The key differences between these two approaches centre on the selection of municipalities, and the focus of the audits. First, since 2003, municipalities are selected at random using the national lottery system rather than a statistical method applied by the Secretariat of Federal Internal Control. To ensure a fair and impartial selection, representatives of the media, political parties and civil society are invited to attend the drawings of municipal governments. Second, random audits cover the operations of municipalities in full, including their management systems, rather than simply the execution of a selected programme.[20] Random audits were applied to states, large municipalities and specific programmes in FY 2004, 2007 and 2008, respectively. Empirical evidence of the impact of these audits suggests that they have had an impact on the electoral performance of incumbent parties and mayors (see Box 3.3).

The introduction of the random audits programme was met with significant resistance by municipalities, even resulting in a series of lawsuits against the federal government. The municipalities alleged that the Secretariat of Federal Internal Control had no power to audit municipalities and was encroaching on the jurisdiction of the Federal Court of Accounts and the municipalities themselves. They also charged bias on the part of the Secretariat of Federal Internal Control in the selection process, with some municipalities arguing that they were selected for political reasons. None of these claims were upheld by the High Court of Justice (*Superior Tribunal de Justiça*). A subsequent 2006 audit of the random audit programme by the Federal Court of Accounts found that there was no statistical evidence of bias in the selection of the random audits.

Box 3.3. **Empirical evidence on the effect of Secretariat of Federal Internal Control random audits**

A number of empirical studies have been prepared based on the results of the Secretariat of Federal Internal Control programme of random audits of small and medium-sized municipalities on the electoral performance of incumbent parties and mayors. Drawing upon 669 municipal reports of random reports selected across the first 13 lottery tranches, Ferraz and Finan (2007) found that an increase in reported corruption of one standard deviation from the sample median reduces the likelihood of an incumbent's re-election by 20%. In addition, they found that the effect of the Office of the Comptroller General of the Union random audits was more pronounced in areas where local radio is available, reducing the probability of re-election by 40%, and increasing the likelihood of re-election of non-corrupt incumbent politicians. Ferraz et al. (2009) go further and highlight the impact of corruption on education outcomes, with corruption reducing education outcomes, measured by results of standardised tests, by 0.35 standard deviations.

In a similar regard, in examining the impact of the random audit reports from 784 municipalities randomly selected from the first 15 lottery tranches, Brollo (2009) found that the release of audit reports, on average, has a detrimental impact on unveiled corrupt mayors' probability of re-election. However, voters do not punish mayors who are affiliated with the political party of the President. The impact of the release of audit reports on the electoral outcomes completely disappears after eight months. There is also evidence that voters can perceive the effects of reductions in transfers at least 15 months before the municipal elections. His analysis shows that the central government significantly reduced the amount of transfers by 25% to municipalities with more than 2 reported corruption violations (30% of the same) after the release of the audit reports. Additionally, the results suggest that the central government compensates politicians who are affiliated with the political party of the President, in municipalities with no or few violations reported in the year and in subsequent years of the audit reports.

Leal Santana (2008) examined the impact of Secretariat of Federal Internal Control random audits

on mismanagement and waste, drawing upon the results of over 1 300 random audits in more than 1 300 municipalities. The study reveals that administrative efficiency (calculated as a proportion between the level of irregularities detected and the amount of resources audited by the Secretariat of Federal Internal Control) is significantly lower in connection with social development programmes as a consequence of the random audits. More significantly, the study concludes that administrative efficiency increases following a second random audit of the same municipality (with inefficiency dropping by 45%, with a 116% drop if the analysis is limited to social programmes alone). The study also reveals that in municipalities where the same mayor underwent both the first and the second audit, the level of administrative efficiency dropped (although the results are only statistically significant in connection with education programmes). This last finding suggests that local mayors may not expect a second audit and relax the level of internal control.

Sources: Ferraz, C. and F. Finan (2007), "Exposing Corrupt Politicians: the Effects of Brazil's Publicly Released Audits on Electoral Outcomes", *IZA Discussion Paper Series*, No. 2836, Institute for the Study of Labour (*Forschungsinstitu zur Zukunft der Arbeit*, IZA), Bonn; Brollo, F. (2009), "Who is Punishing Corrupt Politicians: Voters or the Central Government? Evidence from the Brazilian Anti-Corruption Programme", unpublished paper; Leal Santana, V. (2008), "O Impacto Das Auditorias da CGU Sobre o Desempenho Administrativo Local [The Impact of CGU Audits on Local Administrative Performance]", *Revista da CGU*, 5:22-27, December.

Whereas investigative audits respond to reasonable belief of misconduct, fraud and corruption, the Secretariat of Federal Internal Control also conducts audits to ascertain and quantify individual liability for damages and losses to the federal public administration.[21] This is done through a special investigation of accounts (*Tomada de especial contas*). As part of such an investigation, the Secretariat of Federal Internal Control issues an Audit Report and Certificate indicating any rules or regulations breached, identifying the official responsible and quantifying the damages and losses incurred. Between 2001 and 2010, special investigations of accounts identified damages and losses to the state of approximately BRL 4.6 billion (USD 2.8 billion; EUR 2.0 billion). Many of these concerned the failure of federal public officials to render financial accounts, or irregularities associated with the use of public funds by the federal public administration and funds transferred to sub-national public organisations and private not-for-profit organisations through administrative agreements.

Table 3.13. **Secretariat of Internal Control special investigations of accounts**

Number of audits conducted each year

	2001	2005	2006	2007	2008	2009	2010
Total investigations, of which:	1 108	1 934	1 496	1 722	1 539	1 227	1 481
– Irregularities identified, of which:	484	1 628	1 157	1 459	1 062	1 047	1 106
– Failure to render accounts	106	914	314	503	452	327	245
– Irregularities in use of public resources	90	354	449	248	109	274	243
– Rendered accounts not approved	77	0	46	266	179	145	54
– Breach of object agreement	75	188	208	218	172	301	235
– Damage caused by public official(s)	52	101	97	127	40	62	109
– Irregularity in use of scholarship funds	28	37	20	23	68	105	111
– Irregularities in Unified Health System activities	0	23	22	71	42	60	72
– Other	56	11	1	3	0	3	37
– Estimate damages (in BRL million)	16.7	448.3	656.0	659.6	642.3	702.7	352.2

Notes: 2010 figures until 31 March 2010.

Source: Secretary of Federal Internal Control, Office of the Comptroller General of the Union.

New audit techniques have been introduced to strengthen internal control and to inform internal audit

Since 2006, the Office of the Comptroller General of the Union has used data mining, analysing existing data and generating new government data in collaboration with public organisations, to identify misconduct and corruption. Computer-assisted audit techniques use data mining, matching and validation for audit checks. These provide powerful electronic tools for both operational management and internal audit. It is an iterative process within which progress is defined by discovery, either through automatic or manual methods. One of the first projects was conducted in 2006 and focused on potential conflicts of interest between public officials and suppliers in public procurement. The Office of the Comptroller General of the Union sampled 13 million suppliers and 588 000 public officials to find that some 2 500 federal public officials were the owners or shareholders of nearly 2 000 companies which had supplied over BRL 400 million (USD 239 million; EUR 171 million) to the federal public administration between 2004 and 2006. Moreover, there were cases in which 313 of the 2 000 companies had supplied goods and services to the public organisation in which its owner or shareholder was employed. While these results did not immediately imply misconduct, they resulted in investigations by the Secretariat of Federal Internal Control. Information on the impact of these earlier pilots was not available to the OECD.

From these beginnings, in December 2008, the Office of the Comptroller General of the Union established the Public Spending Observatory to monitor government spending as a basis for identifying possible irregularities and misconduct. Through the Public Spending Observatory, expenditure data is crossed with other government databases as a means of identifying atypical situations that require further examination. Possible irregularities are identified by running automatic "tracks" through data on a daily basis, resulting in "orange" or "red" flags that are shared with management of the federal public organisations to which the data relates. Once a suspicious pattern has been detected, it is loaded into the Online Analytical Processing tool for regular monitoring. A number of working themes have been established within the Public Spending Observatory, including public procurement and outsourcing (see Chapter 5), the Family Grant Programme (see Case Study 2), Federal Government Payment Cards, *per diem* and travel allowances (see Box 3.4). A similar approach is also used for examining the content of private income and asset disclosures by federal public officials (see Chapter 4).

More recently, the Office of the Comptroller General of the Union has introduced permanent monitoring of expenses (*acompanhamento permanente dos gastos*), a form of remote audit. Part of the Office of the Comptroller General of the Union's 2007-10 Institutional Integrity Plan (*Plano de Integridade Institucional*), the permanent monitoring of expenses involves continuous monitoring of the implementation of policies and programmes using expenditure data and knowledge of management processes. The Office of the Comptroller General of the Union reports that the outputs of this activity enables better understanding of: *i)* the structure, capacity and workforce of administrative units; *ii)* the profile and the evolution of expenditure and costs of government programmes; *iii)* the main suppliers and their participation in procurement and administrative contracts; *iv)* actual expenditure in respect to market price, the good or service that was received or how it was used for the intended purposes; *v)* areas for improvement for management and internal control; and *vi)* situations that deserve clarification or further investigation. The permanent monitoring of expenses is conducted by the Secretariat of Federal Internal Control and allows issues to be detected and corrected in a timely manner. Moreover, through this remote auditing, the Secretariat of

Federal Internal Control believes that it can identify and prioritise topics for internal audits.

Box 3.4. Automated tracks on Federal Government Payment Cards and *per diems* and travel allowances

Federal Government Payment Cards

- Vehicle rentals.
- Purchases from suppliers that have outstanding tax debts with the Secretariat of Federal Revenue cannot enter supply contracts with the government.
- Fractioning of expenditure.
- Fuel, lodging, supermarket and restaurant expenditure.
- Expenditure in atypical establishments.
- Transactions made during cardholder's holiday/leave.
- Transactions on weekends or holidays.
- Transactions above BRL 1 500 (USD 896; EUR 644).
- Organisations with transactions above 30% of total annual expenditure.

***Per diems* and travel allowances**

- Improper calculation of airport and boarding fees.
- Excess *per diems* for public officials.
- Unanticipated reservation costs.
- Route/flight occupancy statistics.
- Prices paid for airline tickets.

Source: Secretariat of Corruption Prevention and Strategic Information, Office of the Comptroller General of the Union.

While the permanent monitoring of expenditure allows for the identification and correction of errors, there is no obligation for public managers to periodically undertake self-evaluations of internal control operations. Self-evaluation places the onus on public managers to better understand their systems as a basis for making continual improvements. This process is adopted by a number of OECD member countries and is also recognised by INTOSAI as useful to ensure that controls for which managers are responsible continue to be appropriate and are working as planned. For example, the Government of New Zealand emphasises self-review procedures in each individual public organisation. These procedures include a programme of self-assessment covering financial controls, as well as management review and evaluation of output effectiveness. In the United States, public organisations are required by law to annually conduct control self-assessments. Guidelines for these evaluations are issued centrally by the Office of Management and Budget. The results are reported to the President and the Congress. The reports state whether systems meet the objectives of internal control and conform to standards established by the Comptroller General.

Internal audit capability is strong but could benefit from a focus on performance, including both effectiveness and efficiency

Resource mobilisation and flexibility is not recognised as a problem within the Secretariat of Federal Internal Control nor the Office of the Comptroller General of the Union more generally. There are approximately 2 600 public officials working in the Secretariat of Federal Internal Control (1 400 in Brasília and 1 200 in its regional offices). Staffing resources within the Secretariats of Internal Control within the Federal Ministries of Foreign Affairs and Defence, on the other hand are considered more constrained and heavily affected by an ageing workforce. There are currently 744 officials within the internal audit department for the Unified Health System (DENASUS), although only 4 are auditors by profession. This figure has increased from 686 in 2006, but is below a high of 1 226 in 1997. The 2010 OECD Review of Human Resource Management in Government of Brazil notes that the federal public administration is ageing much more rapidly than the domestic labour market (OECD, 2010d). Constitutional Amendment no. 23/1999 created a small opportunity for public officials who, upon reaching the retirement age of 65, wish to remain in public employment until the age of 70. However, specific measures for preparing for transition have not been undertaken, for example retaining select officials beyond retirement, recruitment of new officials, development of fast-track careers to fill gaps in positions, etc.

Within the Office of the Comptroller General of the Union, participation in programmes and training courses taught by a national school of administration is mandatory for career progression for finance and control officials (*i.e.* finance and control analysts and finance and control technicians).[22] With a view to ensuring compliance with this provision, the Office of the Comptroller General of the Union offers annual training to expand the skills and knowledge of finance and control analysts and technicians need to perform their functions. This training includes a ten-hour module on ethics and public service. This module is sub-divided into units covering: *i)* the normative principles underlying high standards of conduct; *ii)* obligations and duties of public officials and acts of administrative misconduct; *iii)* conflicts of interest and recommendations for avoiding them; *iv)* obligations and duties of the ethics committees; and *v)* the role of the Public Ethics Commission in providing guidance to the ethics committees within individual public organisations. However, finance and control analysts and technicians are not typically members of professional associations, for example internal audit, accounting, etc. In addition, the Office of the Comptroller General of the Union has created and promoted post-graduation programmes for its officials focused on the themes of auditing and government control.

It is the responsibility of organisations of the indirect federal public administration to ensure career development for internal auditors. Some organisations – such as Petrobras, Bank of Brazil (*Banco do Brazil*) and Federal Savings Bank (*Caixa Economica Federal*) – define positions, functions and promotion in their career plans. The full details of career development for internal auditors within organisations of the indirect federal public administration is not available.

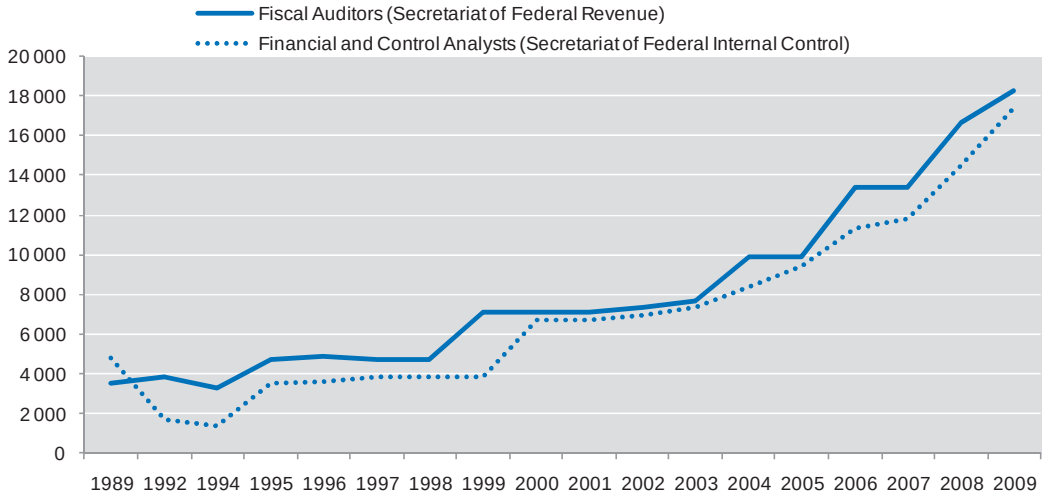
The Office of the Comptroller General of the Union reports to have lost many officials due to perceptions of relatively low pay. These officials have not only gone to the private sector but to other federal public organisations, for example the Federal Court of Accounts. During the past 5 to 10years, the government has sought to resolve this problem. Federal Law no. 11 890/2008 establishes new pay levels for finance and control officials. The wage policy is aimed at strengthening the career system for anti-corruption

officials by reducing the potential commission of illicit acts by finance and control officials. Mean salaries for federal finance and control auditors have increased by approximately 100% during the past 5 years and over 400% during the past decade. Figure 3.5 provides an overview of the evolution of salary levels for financial and control analysts (*Analista de Finanças e Controle*), compared to those of fiscal auditors at the Secretariat of Federal Revenue, which is considered to be one of the best-paid careers within the federal public administration.

In line with this increase in pay, the total budget of the Office of the Comptroller General of the Union, in which the Secretariat of Federal Internal Control is located, has increased. In 2009, its budget was approximately BRL 500 million (USD 300 million; EUR 215 million), up from BRL 66 million in 2005 (see Table 3.14). Excluding personnel costs, the budget for the Office of the Comptroller General of the Union has increased from BRL 22.4 million to BRL 32.4 million (44.6%). The Office of the Comptroller General of the Union receives a lump sum appropriation, albeit with a sub-limit on wages. Without going to the legislature, the Office of the Comptroller General of the Union is allowed to re-allocate funds among line items within their responsibility without Federal Ministry of Finance approval. It is not possible to carry over unused funds or appropriations from one year to another.[23]

Figure 3.5. **Salaries of federal internal auditors (financial and control analysts) in comparison to federal tax officials (fiscal auditors)**

in BRL per month



Note: value of remuneration fiscal auditors and financial and control analysts in January of each year.

Source: da Silva Balbe, R. (2010), *O Resultado da Atuaçao Controle Interno no Context das Reformas na Administraçao Pública* [The Result of the Internal Control Activities in Context of Reforms in Public Administration], Instituto Universitário de Lisboa – Departamento de Ciência Política e Políticas Públicas.

Table 3.14. **Office of the Comptroller General of the Union's annual budget appropriation**

in millions BRL

	2001[1,2]	2005	2006	2007	2008	2009	2010
Personnel	N/A	175.8	270.9	354.8	413.9	532.7	591.5
Materials	N/A	3.1	0.8	1.0	1.7	1.7	2.0
Capital	N/A	2.8	5.1	7.1	10.7	4.8	12.5
Other	N/A	53.9	45.4	51.8	58.6	60.8	90.8
Total	N/A	235.6	322.1	414.8	484.9	600.0	696.8

Notes:

1. The data refer to the month of November for each year surveyed.

2. In 2001, the Office of the Office of the Comptroller General of the Union was a secretariat linked to the Civil House of the Office of the President of the Republic. Beyond the aggregate budget of the Civil House budget, budget figures for the Secretariat of Federal Internal Control cannot be extracted for 2001.

Source: Office of the Comptroller General of the Union.

Including internal auditors in the Office of the President of the Republic, Federal Ministry of Defence, Federal Ministry of Foreign Affairs, Secretariat of Federal Revenue and the Unified Health System, the ratio between internal audit and public officials within the direct public administration is approximately 1:163; however, this is a very crude indicator of efficiency. Excluding the internal auditors for the Unified Health System, this figure falls to 1:209. This ratio is lower than in many OECD member countries, for example, 1:247 in the United States federal government, 1:563 in the United Kingdom, 1:752 in the Netherlands and 1:979 in Canada's federal government (Sterck and Bouckaert, 2006). While the figures for these other OECD member countries include both the direct and indirect public administration, the figures for Brazil do not.

Table 3.15. **Staffing in internal audit units and teams within Brazil's direct federal public administration, 2009**

Audit unit	Finance and control analysts	Finance and control technicians	Others*	Total
Secretariat of Federal Internal Control	1 591	743	223	2 557
Central Unit (Brasília)	829	421	148	1 398
Regional units	762	322	75	1 159
CISET/Office of the President	27	11	25	63
CISET/Federal Ministry of Foreign Affairs	3	0	10	13
CISET/Federal Ministry of Defence	8	0	16	24
DENASUS	4	0	740	744
Special advisors of internal control	10	3	9	22
Secretariat of Federal Revenue	0	0	25	25

Note: Others include officials in charge of administrative tasks and secondees from other federal ministries that work at the Office of the Comptroller General of the Union.

Box 3.5. **Potential for select decentralisation of internal audit in Brazil's direct federal public administration**

Whereas the examples of decentralised audit structures were built into Brazil's current internal audit system from its inception in 2001, an internal audit unit (General Co-ordinator of Internal Audit) was established in 2007 within the Federal Ministry of Finance's Secretariat of Federal Revenue (see Case Study 1). This change sets a precedent for further consolidating Brazil's internal audit model, raising the scope for "select" decentralising of internal audit within the direct public administration. A question thus arises over what criteria should be used to assess which public organisations can establish their own internal audit unit. Such a criterion would need to focus on the size of the organisations and their operations, as well as whether they had demonstrated competency in risk management. Similarly, attention would be needed to ensure that the decentralisation of internal audit was developed in a gradual and phased manner not undermining internal audit during the transition phase. Subsequently, capacity needs to be established within the Office of the Comptroller General of the Union to ensure that public sector organisations comply with policy requirements for internal audit.

There is also a potential business case for increasing the scope of centralisation of internal audit within the indirect federal public administration, providing potential efficiency and savings through shared service arrangements.[24] Smaller organisations may not have the resources or capacity to establish effective internal audit. In this regard, the question becomes whether a "contractual relationship" for internal audit services can be established between the Secretariat of Federal Internal Control and organisations of the indirect public administration. Establishing shared service centres can only be done with the co-operative effort of high officials of the public organisations concerned. Three approaches can support the introduction of shared services. The first relies on a top-down approach in which support service officials are transferred to shared services centres with the budgets of public organisations simultaneously decreased for the corresponding amount of resources. The second relies on an incentive, which consists of a specified, temporary cut back target for support services. The third relies on a temporary or permanent across-the-board productivity cut, which is not specifically linked to support services (OECD, 2010b).

Co-ordination between the Office of the Comptroller General of the Union and the Federal Court of Accounts occurs through a number of mechanisms

Common areas of work performed by internal audit authorities and supreme audit institutions offer opportunities for co-ordination and co-operation. There is both formal and informal discussion between the two organisations regarding the selection of annual financial audits. The two organisations also hold a joint post-graduate course in audit and control of government activities through the *Instituto Serzedello Correa*,[25] and share the same virtual audit training programmes. This allows auditors in both the Office of the Comptroller General of the Union and the Federal Court of Accounts to understand the audit methodologies of the other, although both organisations have a different audit methodology. The Office of the Comptroller General of the Union also monitors the audit findings and implementation of decisions of the Federal Court of Accounts. Audit officials also note that the Secretariat of Federal Internal Control and the Federal Court of Accounts share a similar organisational structure with dedicated audit teams for each federal ministry.

Table 3.16. **Advantages and risks of co-ordination and co-operation between internal and external audit**

Advantages	Risks
– Exchanging ideas and knowledge between audit professionals. – Increasing efficiency and effectiveness of audits in planning audits and communicating audit findings. – Reducing the likelihood of unnecessary duplication of audit work (economy). – Mutual support on audit recommendations to enhance the effectiveness of audit service.	– Compromising confidentiality and subsequently management's trust in the role of internal audit. – Differing conclusions or opinions on the work performed by the other party. – Communicating the preliminary findings to an external party before sufficient audit evidence exists to support those findings. – Imposing, if not properly defined, additional burdens for co-ordination and co-operation on either party in the audit activities of the other party.

Source: Adapted from INTOSAI (2010), Co-ordination and Co-operation between SAIs and Internal Auditors in the Public Sector, INTOSAI GOV 9150, *www.issai.org/media(802,1033)/INTOSAI_GOV_9150_E.pdf*.

Internal audit is subject to various levels of performance evaluation addressing issues of quality and impact

All internal audits are subject to three levels of quality control: first, by the co-ordinator of the audit team; second, by the supervisor of the audit team (typically the official in charge of a regional office or a division in the central unit); finally, by the central division that requested the audit or inspection work. Revisions focus on a combination of issues such as the formal aspects of the report, consistency of the audit findings (*i.e.* are the findings supported by adequate evidence?), appropriateness of recommendations (*i.e.* are they appropriate and feasible?) and the verification of audit documentation. Co-ordinators of the audit team must also complete an assessment form on the participation of auditors under their supervision as a means of enhancing control measures and professional learning. The assessment takes into account the professional conduct of auditors, such as organisation and compliance with professional confidentiality standards. Besides the regular revisions in these instances, Inspections of Compliance are carried out by the Secretariat of Federal Internal Control Department of Planning and Co-ordination to evaluate internal audit activities focusing on audit planning, prioritisation of activities, quality of audit reports and the role of team co-ordinators and supervisors.

Since end-2008, every audited unit is obliged to have three meetings per year with the Secretariat of Federal Internal Control (typically, January, March/May/June and October). These meetings help the Secretariat of Federal Internal Control to monitor the implementation of the Permanent Plan of Measures. Information on progress in addressing recommendations is input into an internal database to support the activities of the Secretariat of Federal Internal Control. Recommendations may be given one of the following statuses: *i)* fulfilled; *ii)* revised; *iii)* postponed at the request of the public manager; *iv)* reiterated, recommendation only partially implemented; *v)* reiterated, recommendation refused by the public manager but not accepted by the Secretariat of Federal Internal Control; and *vi)* refusal of recommendation accepted by the Secretariat of Federal Internal Control. The Permanent Plan of Measures does not include audit recommendations from the Federal Court of Accounts.

The Secretariat of Federal Internal Control is developing computerised monitoring software to support effective monitoring of its recommendations. The software,

"Monitor-web", will allow managers to more easily implement, and internal audit authorities (including decentralised and network internal audit) to monitor, internal audit recommendations. It is expected that the Monitor-web will also reduce the paperwork for public managers in complying with internal audit recommendations, allowing public managers to respond to recommendations and register their "action plans" online. The Monitor-web system will replace the manual monitoring of internal audit recommendations.

Performance indicators do not exist for internal audit in Brazil. Quantitative internal audit targets are defined and performance against them monitored on a semi-annual basis. OECD member countries are moving forward in the development of performance indicators for internal audit. For example, in 1997 the Australian National Audit Office undertook a review of internal audit within the Commonwealth (federal) Government. Such analysis can be used within continuous improvement programmes in business re-engineering. Drawing on these measures allows for structured practitioner dialogue to improve effectiveness and efficiency in government operations. Yet the measurement of these dimensions – particularly outputs (*i.e.* the final products of public organisations) and outcomes (*i.e.* the desired results from delivering outputs) – is frequently crude or simply missing. While the arguments for measuring government operations are very strong, there are also risks. For example, measurement can divert scarce political, managerial and practitioner resources. Equally important, these measures represent only one contribution to management decision making and their designers must consider how to prevent gaming or unintended perverse outcomes being stimulated by the presence of measurement. Discussions and initiatives on measurement of internal audit outputs and outcomes are being undertaken by the Office of the Comptroller General of the Union.

Box 3.6. **Benchmarking the internal audit function: the experience of the Australian National Audit Office**

In 1997 the Australian National Audit Office undertook a review of internal audit within the Commonwealth (federal) Government. Such analysis can be utilised as part of continuous improvement programmes in business re-engineering or in a market testing exercise.

The objective was to obtain and report quantitative and qualitative benchmarks on performance in internal audit within the public sector; and to compare the public sector benchmarks with equivalent international data to identify better practices and highlight opportunities for improvement.

In benchmarking the internal audit service the Australian National Audit Office focused on input, processes and outputs based on cost, time, quantity and quality. The benchmarks are limited in scope in that they rely only on data provided by public organisations and, except for a quality assurance process, were not audited by the Australian National Audit Office.

Between 2000 and 2002, the Australian National Audit Office found improvements in membership of internal audit officials in relevant professional bodies; time taken from fieldwork to issuing the final report; use of formal client surveys; average cost per internal audit report; and the proportion of internal audit recommendations accepted.

Box 3.6. **Benchmarking the internal audit function: the experience of the Australian National Audit Office** *(cont'd)*

Australian National Audit Office internal audit benchmarks

	Input	Process	Output
Cost	Cost of internal audit as a percentage of total expenditure Total cost of the internal audit function	N/A	Cost per internal audit report
Quantity	Total expenditure per auditor Number of employees per internal auditor	Comparison of the allocation of internal audit resources Comparison of resource allocation between assurance activities (percentage of reports produced)	Average reports per internal auditor
Time	N/A	Allocation of effort across planning, fieldwork and reporting Analysis of time taken to complete an audit (excluding planning)	N/A
Quality	Educational level and professional qualifications of internal auditors Average years of experience of internal auditors	Analysis of quality control techniques used regularly Use of formal and informal client satisfaction surveys	Acceptance of recommendations (percentage)

Source: Australian National Audit Office (2000), "Benchmarking the Internal Audit Function", Audit Report no. 14 2000–2001, Performance Audit; Australian Nationl Audit Office (2002), "Benchmarking the Internal Audit Function Follow-On Report: Benchmarking Study", Audit Report no. 13, 2002-03, Information Support Services; OECD (2009), *Measuring Government Activity*, OECD Publishing, Paris, doi: 10.1787/9789264060784-en.

In addition, the activities of the Secretariat of Federal Internal Control are audited by the Federal Court of Accounts on a periodic basis. For example, in 2005, the Federal Court of Accounts carried out an audit of the Secretariat of Federal Internal Control to analyse the performance of internal control within the federal public administration in connection with the monitoring over irregularities and misuse of public resources. It considered the powers and the instruments available to the Secretariat of Federal Internal Control as well as its operational capacity and the criteria used to allocate resources among the different control activities. It drew particular attention to the Secretariat of Federal Internal Control's random audits. The Federal Court of Accounts, which supports the National Congress (see Chapter 1), conducted the report at the request of the Federal Senate. Among its findings, the Federal Court of Accounts found that Secretariat of Federal Internal Control policies were in line with international standards (*e.g.* INTOSAI guidelines for performance auditing).

Box 3.7. **Findings of 2006 Federal Court of Accounts audit of the Secretariat of Federal Internal Control**

In 2006, the Federal Court of Accounts carried out an audit of the Secretariat of Federal Internal Control to analyse the performance of internal audit in connection with the monitoring of irregularities and misuse of public resources. It considered the powers and the instruments available to the Secretariat of Federal Internal Control as well as its operational capacity and the criteria used to allocate resources among the different control activities.

The Federal Court of Accounts Decision found that:

- Random audits succeeded in achieving their objective of promoting direct social control and combating corruption. However, the exclusion, at the time, of municipalities with more than 500 000 inhabitants, which together represented more than 29% of the population, was unjustified. It instructed the Secretariat of Federal Internal Control to include such municipalities in the programme.
- Random audits dramatically reduced the amount of time and staff devoted to internal audits of government programmes and actions. At the time, random audits accounted for 90% of auditing activities. This raised concerns, as some programmes with potential for corruption (*e.g.* public works, advertising, information technology contracts) do not involve the transfer of funds to municipalities. However, the Federal Court of Accounts Decision confirmed the limited number of irregularities identified through management audits, which it compared with the potential of random audits (which had revealed serious irregularities in 54% of cases).
- The information produced based on the random audits was insufficient to prosecute specific officials or for the Federal Court of Accounts to establish individual responsibility and claim compensation for losses and damages to the state. It instructed the Secretariat of Federal Internal Control to improve these aspects.

The Secretariat of Federal Internal Control did not pay enough attention to organisations of the indirect public administration, including state-owned and mixed-capital enterprises, some of which had caused problems in the past (*e.g.* the postal company). It recommended that the Secretariat of Federal Internal Control prepare a specific programme to audit state-owned and mixed-capital enterprises in collaboration with the internal audit units of these enterprises.

The Office of the Comptroller General of the Union has presented to the Federal Court of Accounts a comprehensive set of initiatives concerning these recommendations. In 2009, the Federal Court of Accounts found these measures satisfactory. The recommendations were subsequently labelled as fully implemented.

Source: Federal Court of Accounts Decision (*Acordão*) no. 412/2007 and 2 178/2009.

Conclusions and proposals for action

Brazil's internal control system of the federal public administration has been continuously modernised since the late 1980s. It began with standardisation and automation of the back-end systems and the establishment of the internal control policy and stewardship role within the Office of the Comptroller General of the Union. It is advancing with the introduction of risk-based control both at the level of the federal public administration and individual public organisations. These developments shift the emphasis from compliance to management. The modernisation of internal control systems

supports the government's efforts to enhance integrity and prevent corruption. In order to strengthen the internal control framework, Brazil's federal government could consider the following proposals for action for the Office of the Comptroller General of the Union:

- Complement the 'Internal Control Manual of the Federal Public Administration" with a series of good practice guides. The current manual is particularly formalistic and theoretical in nature rather than operational. These good practice guides may address issues such as risk management, control actions, planning internal audit activities, resourcing internal audit, internal audit work practices and performance assessment and quality assurance. Good practices need not only originate from federal public organisations but also state and municipal public organisations, as well as private organisations, in Brazil or overseas. In the process of formulating good practice guides, the Office of the Comptroller General may identify good practices from internal audit units within the indirect federal public administration to complement those of its own audit activities.
- Introduce (in a phased manner) the current risk management methodologies in at least five public organisations during 2011/2012 as a basis for continued learning on risk management, and to refine earlier risk management methodologies. In this process, the Office of the Comptroller General of the Union should actively take a lead role in the process because of its mandate, resourcing and understanding of internal control. This will help public organisations to better understand their operational risks and provide input into refining the current operational generic risk management methodologies. Over time, and with increased maturity of risk management frameworks in these federal public organisations, the role of the Office of the Comptroller General of the Union can focus on providing an independent assurance of the effectiveness of risk management strategies and the effectiveness of the framework.
- Work together with the Federal Ministry of Planning, Budget and Management and the national schools of administration to integrate risk management into programmes supporting the development of competencies of senior public managers.

In parallel with moves to strengthen the internal control system of the federal public administration, internal audit within federal ministries has been largely centralised within the Secretariat of Federal Internal Control, with dedicated internal audit teams allocated to each federal ministry. Agencies, foundations, state-owned and mixed-capital enterprises all have their own internal audit units. The Secretariat of Federal Internal Control has increasingly invested in programme (performance) audit and developing systems to follow up on audit recommendations. In order to strengthen the efficiency of the internal audit function, Brazil's federal government could consider the following proposals for action for the Office of the Comptroller General of the Union:

- Include both internal and external audit recommendations and progress made in implementing them in the proposed Monitor-web, a system designed to ensure quality and adequate follow up of internal audit activities. Focusing on internal audit recommendations alone does not allow management to have a holistic picture of independent assessments of their operations. Moreover, as the federal public administration introduces risk management into federal public organisations, attention may also be given to integrating this information into the audit monitoring systems. This would ensure a single dashboard for public managers to monitor and evaluate internal control actions. It would also enable

internal auditors to access the same information held by public managers in conducting an objective evaluation of internal control actions.

- Benchmark internal audit activities conducted by dedicated internal audit teams within the Office of the Comptroller General of the Union and the internal audit units of organisations of the indirect public administration to explore differences in costs, quantity, time and quality of internal audit activities and to drive performance improvements.
- In the medium- to long-term, assess the business case for shared internal audit services across the direct public administration. Such an assessment would include criteria to be introduced should a federal public organisation wish to develop its own internal audit function.

In order to strengthen collective commitment and the whole-of-government approach for internal control, Brazil's federal government could consider the following proposals for action for the Office of the Comptroller General of the Union:

- Explore mechanisms for closer co-ordination in the modernisation of the internal control framework among the Office of the Comptroller General of the Union with the Secretariats of Management, Logistics and Information Technology (Federal Ministry of Planning, Budget and Management) and Secretariat of the National Treasury (Federal Ministry of Finance). These secretariats have policy functions that impact the internal control system of the Federal Public Administration. For example, the Secretariats of Management are working together with federal public organisations to re-engineer internal processes to improve service delivery. The Secretariats for Logistics and Information Technology and National Treasury also oversee many of the back-office management systems of the federal public administration.
- Assess the role and composition of the Commission for Co-ordination of Internal Control as a mechanism for exchanging experiences on internal control. This commission has not convened since 2003. The commission could play an advisory role in the development of tools to support risk management in federal public organisations and provide much meaningful input into the generic risk management methodologies developed by the Office of the Comptroller General of the Union. However, the commission may benefit from the participation of more internal audit units from organisations of the indirect public administration (currently only one-third) and the involvement of representatives from the national professional internal audit association and the Federal Court of Accounts.

Notes

1. See United Nations Convention Against Corruption, Article 9.2:

   "Each state party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall [include]…*iii)* a system of accounting and auditing standards and related oversight; *iv)* effective and efficient systems of risk management and internal control; and *v)* where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph."

   See Article 3 of the Inter-American Convention Against Corruption, which notes that governments:

   "[To promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance] the states parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: …government revenue collection and control systems that deter corruption".

2. See 1988 Federal Constitution, Article 70.

3. See 1988 Federal Constitution, Article 74.

4. See Federal Law no. 10 180/2001, Article 19.

5. The Federal Planning and Budget System aims to: formulate national strategic planning; formulate national plans, sectoral and regional economic and social development; make the multi-year plan, the budget guidelines and annual budgets; manage the planning process and the federal budget; promote co-operation among the states, the Federal District and the municipalities, aiming for compatibility of rules and tasks related to different systems, at the federal, state, county and municipal levels. The Federal Financial Management System is aimed at the financial balance of the federal government, within the limits of public revenue and expenditure. The Federal Accounting System aims to highlight the state budget, financial and property of the Union.

6. See Office of the Comptroller General Administrative Order no. 164/2002.

7. See Federal Decree no. 6170/2007 and Federal Ministry of Planning, Budget and Management, Federal Ministry of Finance and Office of the Comptroller General of the Union Interministerial Decree no. 127/2008, implementing the aforementioned federal decree).

8. See *www.convenios.gov.br/portal/publicarArquivos*.

9. See Federal Decree no. 2 809/1998 regarding the purchase of tickets by federal public organisations.

10. See Federal Decree no. 3 892/2001 regarding the purchase of airline tickets, materials and services through use of Federal Government Credit Card by federal public organisations.

11. This may be applied only in relation to the specificities involved in the assistance of indigenous health.

12. See Federal Ministry of Planning, Budget and Management Administrative Instruction no. 90/2009.

13. The concept of activity is broader than that of "organisational unit" (*unidade organizacional*), which refers to the unit or department in charge of a given task. As a result, a given activity can be carried out by a plurality of organisational units within a given institution.

14. There are various models for resourcing an internal audit activity. These include:

    In-house: internal audit services are provided exclusively or predominantly by in-house employees of the organisation. The internal audit activity is managed in-house by an employee of the organisation.

    Co-sourced: internal audit services are provided by a combination of in-house employees and service providers. The internal audit activity is managed in-house by an employee of the organisation.

    Outsourced with in-house management: internal audit services are provided by service providers contracted to the organisation for this purpose. The internal audit activity is managed in-house by an employee of the organisation.

    Fully outsourced: all internal audit services are provided by service providers contracted to the organisation for this purpose. The service provider also manages the internal audit activity. Project management of the service provider contract is done in-house by an employee of the organisation.

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    Fully outsourced: all internal audit services are provided by service providers contracted to the organisation for this purpose. The service provider also manages the internal audit activity. Project management of the service provider contract is done in-house by an employee of the organisation.

16. Federal Law no. 10 180/2001, Articles 22 and 23; Federal Decree no. 3 591/2000, as amended by Federal Decrees no. 4 034/2002 and no. 6 692/2008. The Secretariat of

Internal Control of the Office of the President of the Republic is responsible for internal control activities of the Office of the Attorney General of the Union until the creation of its own body. To date, the Office of the Attorney General of the Union has not established its own internal control body.

17. DENASUS oversees and audits Unified Health System-specific activities. While established in 2000, DENASUS was not a new unit. It predecessor, the Department of Control, was established as the central internal audit unit of the Unified Health System in 1990. More recently, Federal Decree no. 5 841/2006 establishes DENASUS within the structure of the Secretariat for Strategic and Participatory Management of the Federal Ministry of Health. The move was in response to increasing the institutionalisation of the Unified Health System and gradual decentralisation of health services and the use of financial resources, making it necessary to consolidate power in the implementation of strategic management processes and participatory systems.

18. Until 2007, these plans were submitted to the Secretariat of Federal Internal Control before end November. The fiscal year in Brazil runs from 1 January through 31 December.

19. Municipal lotteries selects 60 municipalities with a population of up to 500 000 inhabitants, not including state capitals. These have been conducted every month since April 2003. To date, 29 rounds of random audits have been conducted and over 1 500 municipalities (or more than 28% of all municipalities) have undergone random audits. In each municipality, auditors examine accounts and documents and make personal and physical inspection of works and services implementation. Particular emphasis is on interaction with the population, either directly or through community councils or other representative organisations engaged in social control activities. The results of the lottery selection and the final audit reports for municipalities and states, as well as capitals and major cities, are available online from the Office of the Comptroller General of the Union Internet pages: *www.cgu.gov.br/AreaAuditoriaFiscalizacao/ExecucaoProgramasGoverno/Sorteios/Estados/Sorteados/index*; access to state random audit reports: *www.cgu.gov.br/sorteios/index2*; list of municipalities by lottery: *www.cgu.gov.br/AreaAuditoriaFiscalizacao/ExecucaoProgramasGoverno/Sorteios/Municipios/Sorteados/index*; access to municipality state random audit reports: *www.cgu.gov.br/sorteios/index1*.

20. These audits were conducted in several steps: *i)* the Secretariat of Federal Internal Control would select the programmes to be audited in accordance with its own procedures (i.e. assessing relevance, risks, etc.); *ii)* the Secretariat of Federal Internal Control would carry out an audit of federal ministries involved in the implementation of those programmes with a view to understanding the design and characteristics of the programmes; *iii)* the Secretariat of Federal Internal Control would produce a list of municipalities based on statistical significance and send a service order (*ordens de Serviço*) describing the scope of the audit (list of municipalities and of programmes to be scrutinised) to the Secretariat of Federal Internal Control regional units; *iv)* the Secretariat of Federal Internal Control regional units would perform the audit and prepare a management report on the execution of each programme in each region; and *v)* the Secretariat of Federal Internal Control would consolidate the data and produce a national evaluation on the execution of the audited programmes, forwarding the final report to the federal ministries concerned in order for them to address the issues identified by the Secretariat of Federal Internal Control (Olivieri, 2008).

21. See Federal Court of Accounts Normative Instruction no. 56/2007, as amended.

22. See Federal Law no. 11 890/2008, Article 154, paragraph 2.

23. In general, the remaining credits from one year cannot be transferred to the following year. In exceptional circumstances, however, this can occur (Federal Constitution, Article 167§2).

24. Shared service centres can be defined as government units providing support services to more than a single public organisation or sub-sector of government (central government, social security funds, local government). Support services include internal audit, as well as human resources and organisation, information and ICT, accommodation and facilities, communication, finance and procurement. Units that provide support services to a single public organisation (including its subordinate divisions) are not considered shared service centres. These units have always been the most important providers of support services in central government, and still are in most OECD member countries. On the other hand, units that provide support services to two or more (core) public organisations and/or divisions of two or more public organisations can be considered shared service centres (OECD, 2010b).

25. The *Instituto Serzedello Correa* is a strategic support unit of the Federal Court of Audit, subordinate to the General Secretariat of the President of the Republic, which aims to propose and pursue policies and actions of external selection of public officials, corporate education and knowledge management.

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Chapter 4

Embedding high standards of conduct

Standards of conduct are recognised as essential for guiding the behaviour of public officials in line with the public purpose of the organisation in which they work. This chapter examines actions by the federal government largely since the creation of the Public Ethics Commission in 1999 to define and effectively guide standards of conduct among federal public officials. The proposals for action focus on *i)* tailoring guidance and training activities to the risks associated with officials' tasks and level of management; *ii)* linking standards of conduct to operational risks identified through internal control and information received through the ombudsman system; and *iii)* introducing a standardised evaluation framework to monitor and assess actual standards of conduct within individual public organisations.

Introduction

Standards of conduct are recognised as essential for guiding the behaviour of public officials in line with the public purpose of the organisation in which they work. The "OECD Principles for Improving Ethical Conduct in the Public Service" acknowledge the critical role of, and provide guidance to decision makers and public managers on, high standards of conduct for a cleaner public administration (see Annex 4.A1). Recognising the emerging risks at the interface of the public and private sectors, OECD member countries have since adopted "Guidelines for Managing Conflict of Interest in the Public Service" in 2003 and "Principles for Transparency and Integrity in Lobbying" in 2010. Standards of conduct are also considered a key component of a sound internal control and the fight against corruption. The International Organisation of Supreme Audit Institutions (INTOSAI), for example, revised its "Guidelines for Internal Control Standards for the Public Sector" to include ethics management. The inclusion was justified because of the importance of standards of conduct for the prevention and detection of fraud and corruption. Standards of conduct are also articulated in international conventions against corruption.[1]

Embedding high standards of conduct is supported by: *i)* developing and regularly reviewing practices and procedures influencing standards of conduct; *ii)* promoting government action to maintain high standards of conduct and to address risks; *iii)* incorporating ethical dimensions into management frameworks to ensure that practices are consistent with the public administration's values; and *iv)* assessing the effects of public management reforms on ethical conduct. There is also a growing demand in OECD member countries for evidence of embedding high standards of conduct, requiring governments to give attention to assessment and verification. This is a difficult task, however, and many challenges exist including: *i)* defining what is measurable; *ii)* ensuring credible and reliable assessment results; and *iii)* integrating assessment results in policy making to guarantee that the impact is effective.

This chapter describes the main trends and challenges in embedding high standards of conduct among Brazil's federal public officials. Public service principles have been articulated in codes of conduct for federal public officials, for high officials and, increasingly, for individual public organisations. Efforts have also sought to clarify and maintain the relevance of existing standards, such as in relation to gifts, conflicts of interest, nepotism, etc., while at the same time addressing emerging risks and meeting citizens' expectations. This is supported by proportionate sanctions for breaches of ethics and administrative misconduct within the legal framework, with efforts in recent years to improve investigative procedures. In parallel, institutional structures and capacity are being developed both at the centre of government and at the level of individual public organisations to guide and enforce high standards of conduct through professional socialisation, counselling and channels for reporting misconduct.

The drive for embedding high standards of conduct in Brazil has been led by the Public Ethics Commission (*Comissão de Ética Pública*) and the Office of the Comptroller General of the Union (*Controladoria-Geral da União*).

- The Public Ethics Commission is an advisory body to the President of the Republic. It has three main functions. First, it oversees compliance with the Code of Conduct for the High Officials in the Federal Public Administration. Second, the Commission conducts investigations, either *ex officio* or upon receipt of a

credible report, of possible breaches of ethics by high public officials. Third, and as the central unit of the Ethics Management System of the Federal Public Administration, it co-ordinates, evaluates and supervises the activities of all ethics committees within federal public organisations. The latter was formalised by Federal Decree no. 6 029/2007 regarding the Ethics Management System of the Federal Public Administration.

- The Office of the Comptroller General of the Union has two secretariats focusing on standards of conduct. The Inspectorate General of Administrative Discipline (*Corregedoria-Geral da União*), established in 2001, conducts investigations, either *ex officio* or upon receipt of a credible report, of possible administration conduct by federal public officials. As the central unit of the Administrative Disciplinary System of the Federal Public Administration (*Sistema de Correição do Poder Executivo Federal*), it co-ordinates, evaluates and supervises the activities of inspectorates and disciplinary committees within federal public organisations. The Secretariat for Corruption Prevention and Strategic Information (*Secretaria de Prevenção da Corrupção e Informações Estratégicas*), established in 2005, develops training materials on standards of conduct targeting public officials. It also analyses the private interest disclosures submitted by federal public officials as a means to detect illicit enrichment.

The Office of the Comptroller General of the Union also leads the Commission for Co-ordination of Administrative Discipline. This commission is an advisory body that aims to promote the integration and understanding of agencies and units that form part of the Administrative Disciplinary System of the Federal Public Administration. It is made up of nine representatives from the internal control system and chaired by the Comptroller General of the Union. In addition, the Council on Public Transparency and Combating Corruption (*Conselho de Transparência Pública e Combate à Corrupção*) serves as a consultative body to the Office of the Comptroller General of the Union. Its purpose is to debate and recommend measures for the promotion of transparency, internal control of public financial resources, and prevention of corruption within the federal public administration. This includes, among other things, carrying out studies and establishing strategies to substantiate legislative and administrative proposals for the prevention of corruption and mobilising organised civil society in direct social control.

The remainder of this chapter is structured in two sections. The first section examines the government's efforts to define standards of conduct and to create the administrative structures to support their formulation and subsequent implementation. It includes a discussion on the various codes of conduct that exist within the federal public administration and efforts to build capability within the administration for enforcing breaches of ethics and administrative misconduct. The second section examines how public organisations effectively guide and assess the implementation of standards of conduct. It includes routine dissemination, training and counselling on standards of conduct, private interest disclosures and protected public interest disclosures as well as verifying the functioning of the systems for promoting high standards of conduct.

Developing systems for promoting standards of conduct

Defining standards of conduct and creating administrative structures for their effective implementation are recognised as pre-conditions for effectively guiding standards of conduct among public officials. A concise, well-publicised statement of principles and standards, *i.e.* a code of conduct, can provide easily interpretable guidance

for public officials to apply in their daily activities. It can also make it easier for public officials to identify conduct that breaches these standards as a basis for reporting it to the appropriate authority. Standards of conduct for Brazil's federal public officials are articulated in a combination of primary and secondary legislation. Core among these are the Code of Conduct for the Federal Public Administration (Federal Law no. 8 027/1990), Federal Law no. 8 112/1990 regarding the Public Administration and the Code of Professional Ethics for Public Officials in the Federal Administration (Federal Decree no. 1 171/1994). This legislation defines the obligations and duties of public officials and detailed sanctions for ethical breaches and administrative misconduct.[2] Together, these translate the principles of the public service as promulgated in the 1988 Federal Constitution into standards for public officials. These principles are legality, morality (*i.e.* ethics), impartiality, effectiveness and publicity (*i.e.* transparency). In many respects, Brazil's principles of public service are similar to those of OECD member countries (see Figure 4.1) and widely considered as the basis for establishing a cleaner public administration and for building trust in government.

Table 4.1. **Key legislation defining the standard of conduct for officials within Brazil's federal public administration**

Primary Law[1]	Secondary Law[1]
– 1988 Federal Constitution – Criminal Code (Decree-Law no. 2848/1940)[2] – Federal Law no. 8027/1990 on the Code of Conduct for the Federal Administration[3] – Federal Law no. 8112/1990 on the Legal Framework for the – Federal Administration[4] – Federal Law no. 8429/1992 on Government (Administrative) Impropriety	– Federal Decree no. 1171/1994 on the Code of Professional Ethics for Public Officials in the Federal Administration – Statement no. 37/2000 on the Code of Conduct for the High Officials in the Federal Public Administration – Federal Decree no. 4081/2002 on the Code of Ethical Conduct of Public Officials Serving in the Office of the Presidency[5]

Notes:

1. Primary law includes the main laws passed by the legislative bodies; secondary legislation is made by a person (minister) or body under authority contained in primary legislation. Whereas primary legislation often outlines guiding principles and responsibilities, secondary law provides more precise details on practices and procedures.

2. As amended by, in particular, Federal Laws no. 6 799/1980, 8 137/1990, 9 983/2000, 10 763/2003 and 11 466/2007.

3. Converting Provisional Measure no. 159/1990.

4. As amended by Federal Law no. 9 527/1997.

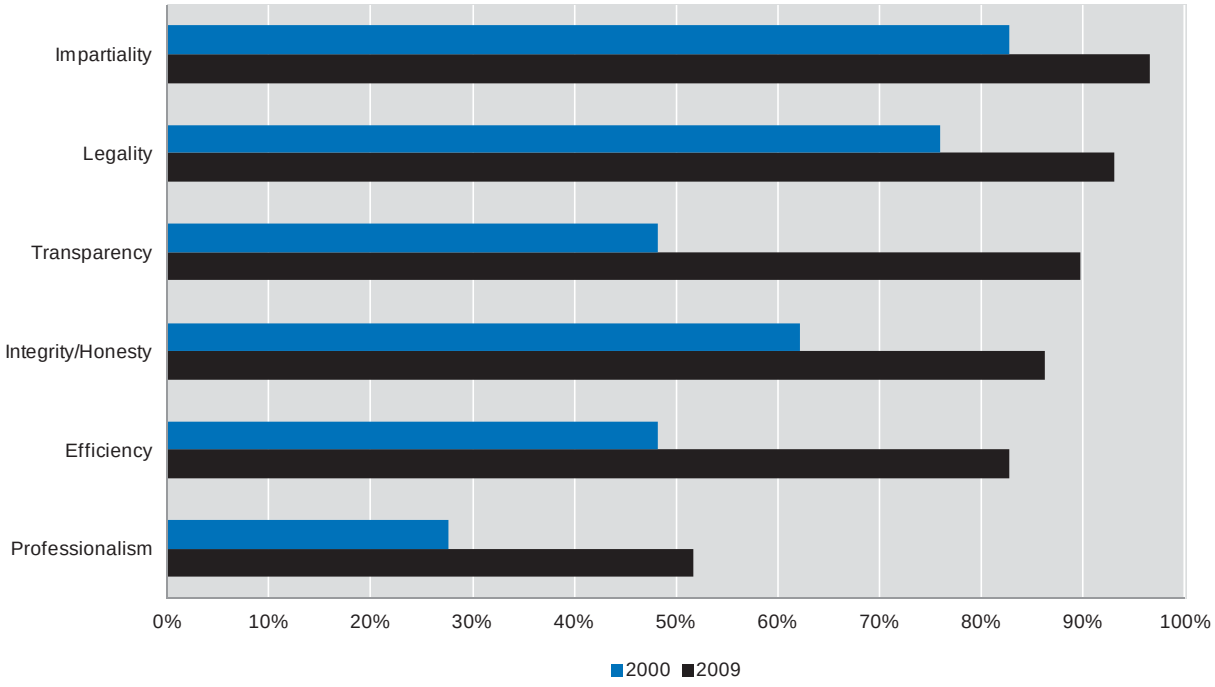
5. As amended by Federal Decree no. 4 610/2003.

While this framework outlines the standards of conduct as what is expected, Federal Law no. 8 429/1992 defines what activities are prohibited. For example, public officials are prohibited from, among other actions: *i)* holding more than one remunerated position within government; *ii)* accepting, either for oneself or someone else, money, personal or real property, or any kind of direct or indirect economic advantage, in the form of a commission, percentage, gratuity or gift from any party that has a direct or indirect interest that can be accomplished or furthered by an act or omission of the public official in performing his or her functions; *iii)* accepting any employment or commission or engaging in consulting or advisory work for any natural person or legal entity that has an interest that can be achieved or furthered by an act or omission committed in the performance of a public official's functions; *iv)* accepting any economic advantages in exchange for arranging the use or investment of any public monies; *v)* revealing or

allowing any third party to gain access to information regarding any political or economic measure that can affect the price of a commodity, good or service, before that measure is officially announced. (Annex 4.A2 provides a consolidated list of administrative sanctions within the federal public administration.)

Figure 4.1. **Evolution of core public service principles in OECD member countries**

Percentage of responding OECD member countries



Notes: Percentage is calculated out of 29 OECD member countries. It does not include data for the Slovak Republic (joined the OECD in December 2000); Chile (joined the OECD in May 2010); Slovenia (joined the OECD in July 2010); or Israel (joined the OECD in September 2010).

Source: OECD (2009), *Government at a Glance 2009*, OECD Publishing, Paris, doi: 10.1787/9789264075061-en.

The inclusion of the code of conduct in Brazil's legal framework mirrors the trend in OECD member countries (OECD, 1998; 2000). It is necessary, however, to distinguish between making the code a legal document and incorporating the elements of the code within the legal framework *per se*. Incorporating the elements of the code, particularly the positive expectations of behaviour, within (primary or secondary) legislation demonstrates a clear commitment from the government, promotes compliance and supports enforcement. Making a code a legal document may make it less flexible to adapt to emerging issues and have a more legalistic use of language. Irrespective of the model, codes of conduct need to be supported by management mechanisms to achieve compliance.

Standards of conduct together with explicit prohibitions have been articulated both for high officials and, increasingly, individual public organisations

The Code of Conduct for the High Officials in the Federal Public Administration applies to the President and Vice-President of the Republic, federal ministers, executive

secretaries, secretaries and other level 6 supervisory and management officials (*direção e assessoramento superiores*). The rationale for a separate code for high officials in Brazil reflects a number of factors including: *i)* the position of these officials at the political-administrative interface and their authority as decision makers; *ii)* the heightened risks of conflicts between these officials' public and private interests, especially in cases where these officials were appointed from outside the public administration; and *iii)* the leadership role and visibility of these officials to other public officials and citizens more generally. There are a total of 438 officials under the Code of Conduct for the High Officials in the Federal Public Administration. Of these, 232 come from the direct federal public administration, 66 are from agencies, 41 are from public foundations, 20 are from state-owned enterprises and 70 are from mixed-capital enterprises.

The decision in Brazil to establish a dedicated code for high public officials occurred after the promulgation of a code for all public officials. This is different from the experience in many countries, whereby codes of conduct were first established for high (or senior) officials. Phasing in a code from the top is believed to create a number of benefits: *i)* it demonstrates the leadership and seriousness of high officials in adopting high standards of conduct; *ii)* it develops knowledge and experience among high officials, who will subsequently be obliged to guide their subordinates; and *iii)* it allows the central ethics authority and individual public organisations to assess the application of a code to real-life situations, to address unforeseen issues and to refine dissemination and training materials before rolling out the standards to all public officials. Subsequent actions in Brazil relating to the implementation of the codes have, however, focused first on high public officials before, such as private interest disclosures, as discussed later in this chapter.

More recently, codes of conduct have been developed for public organisations of special sensitivity or where public officials have heightened exposure to conflict of interest. *Ad hoc* surveys conducted the by Office of the Comptroller General of the Union in 2008, 2009 and 2010 identified codes for organisations within both the direct and indirect federal public administration. Within the direct public administration, for example, separate codes exist for the Federal Ministry of Finance (*Ministério da Fazenda*), the Secretariat of National Treasury (*Secretaria do Tesouro Nacional*), Council of Financial Activites (*Counselho de Controle de Acividades Financeiras*) and the Office of the Comptroller General of the Union itself. Within the indirect public administration, separate codes exist within the Bureau of Engraving and Printing (*Casa da Moeda*), the Federal Savings Bank (*Caixa Econômica Federal*), the Securities and Exchange Commission (*Comissão de Valores Mobiliários*), the Brazilian Postal Service (*Correios do Brasil*), the Asset Management Company (*Empresa Gestora de Ativos*), Information Technology and Social Security Company (*Empresa de Tecnologia e Informações da Previdência Social*), the National Institute of Metrology, Standardisation and Industrial Quality (*Instituto Nacional de Metrologia, Normalização*). In addition, a code of conduct is currently being developed for federal tax officials within the Secretariat of Federal Revenue (see Case Study 1).

While separate codes can constitute a core element of a strategy to target organisations with functions that are considered particularly sensitive to risks, maintaining consistency among a large number of codes within the federal public administration can be a challenge. Distinct codes for different public organisations can undermine the uniformity of expected standards of conduct to integrity risks. The Public Ethics Commission does not review and comment on codes as they are being developed, nor does it have the capacity to do so. Similarly, federal public organisations do not

typically consult the commission during the process of formulating their codes. Where the commission has been consulted, most recently by the Secretariat of Federal Revenue, the exchange serves more as a means of information sharing. Thus, the Public Ethics Commission has no systematic information on which public organisations even have their own code. As noted, while *ad hoc* surveys by the Office of the Comptroller General of the Union have identified a number of public organisations that have their own specific codes, these surveys focus on the existence of a code rather than on its content.

Codes of conduct in Brazil do not specifically address a unique characteristic of the federal public administration's human resource management system: namely the role of supervisory and management officials. As discussed in Chapter 1, and in more detail in the 2010 OECD Review of Human Resource Management in Government of Brazil, these officials fulfil many of the decision-making and management functions within federal public organisations (OECD, 2010). The President of the Republic and federal ministers have the prerogative and discretion to appoint and remove officials in supervisory and management positions. These positions are not, however, automatically filled from outside the federal public administration, and career public officials are routinely appointed to such positions. Limits exist on the number of outside appointments that can be made to supervisory and management positions: 75% of officials in supervisory and junior management positions (*i.e.* levels 1-3) and 50% of those in middle management positions (*i.e.* level 4) must be permanent public officials from the federal government, states and municipalities as well as retired public officials and employees of state-owned enterprises.[3] There is no ceiling on the number of persons who are not public officials who may hold positions at the most senior levels of the supervisory and management positions (*i.e.* levels 5-6). In August 2010, approximately 40% of level 6, 31% for level 5 and 23% for levels 1-4 supervisory and management positions were filled from the private and not-for-profit sectors.

Only level 6 supervisory and management officials are guided by the Code of Conduct for the High Officials in the Federal Public Administration. In comparison, levels 4 through 6 correspond to what constitutes a senior public official in OECD member countries (OECD, 2010b). Levels 4 and 5 supervisory and management officials are regulated by the same codes of conduct as career public officials: the Code of Professional Ethics for Public Servants in the Federal Administration (Federal Decree no. 1 171/1994). There is thus no distinction between the risks associated with the decision-making powers of many of these officials and the fact that some are recruited externally from the private and not-for-profit sectors. While it may not be necessary to establish a new code of conduct for all supervisory and management officials, it may be beneficial to include some under the Code of Conduct for the High Officials in the Federal Public Administration. This would expand the scope of this code to an additional 4 000 officials.

Efforts in recent years have sought to clarify and maintain the relevance of existing standards, address risk areas and meet citizens' expectations

The continual modernisation of Brazil's federal public administration has given rise to new forms of potential vulnerabilities and conflicts of interest between officials' private interests and public functions. The need to clarify questions concerning the interpretation of standards of conduct in Brazil has been achieved, in part, through the activities of the Public Ethics Commission. The commission issues binding resolutions and guidance notes to support the implementation of the Code of Conduct for High Officials in the Federal Public Administration. Topics covered by the commission's resolutions include participation in external activities, the receipt of gifts and measures to

prevent conflicts of interest (see Box 4.1). While these resolutions focus in particular on the activities of high officials, they also serve as input for the ethics committees within individual public organisations in guiding the conduct of officials in the public purposes of the organisation.

Box 4.1. Examples of binding resolutions by Brazil's Public Ethics Commission: participation in external activities, receipt of gifts and managing conflict of interest

The Public Ethics Commission issues binding resolutions to resolve questions concerning the interpretation of the Code of Conduct for High Officials in the Federal Public Administration. For example:

On participation in external activities: Resolution no. 2/2000 guides high public officials on participating in external activities such as seminars, conferences and lectures both in Brazil and abroad, particularly when the payment of travel, accommodation, meals and registration fees is not borne by the federal public administration. As a general rule, high public officials may not accept payment or reimbursement of travel and accommodation expenses incurred by an individual, organisation or association that maintains a business relationship with the federal public organisation in which the official is employed. Exceptions exist when the event is organised: *i)* as part of a prior contractual obligation with the official's public organisation; *ii)* by an international organisation of which Brazil is a member; or *iii)* by a foreign government, academic, scientific or cultural institution. High public officials may, however, accept discounts provided that it does not constitute a personal benefit. The resolution states that, when attending in a personal capacity, expenses may be borne by the sponsoring organisation provided that the official makes information on the conditions of their participation publicly available, including the amount received or borne by the sponsoring organisation, if any; as well as a statement that the sponsoring organisation is not interested in individual or collective decisions that can be taken by the official. Participation in an external activity in a personal capacity may not, however, be undertaken to the detriment of an official's public duties.

On gifts: Resolution no. 3/2000 guides high public officials on the receipt of gifts. As a general principle, high public officials are prohibited from accepting gifts of any value from an individual, organisation or association (or third party representative) that: *i)* is subject to regulatory jurisdiction of the public organisation to which the official belongs; *ii)* has a personal, professional or business interest in the public organisation's decisions; or *iii)* maintains a business relationship with the public official or the organisation to which the public official belongs. Exceptions exists when a gift: *i)* is made out of kinship or friendship provided that the cost is borne by the individual making the gift and not another person, organisation or association; *ii)* is made by a foreign official where there is reciprocity protocol or reason of diplomatic engagement; *iii)* has no commercial value and as a courtesy as long as they do not exceed BRL 100 (USD 60; EUR 43) in value; *iv)* is a general giveaway whose distribution is not more than one every 12 months; and *v)* includes prizes, money or goods granted to the public official by an academic, scientific or cultural organisation in recognition for the official's intellectual contributions; awards granted on competitive grounds for academic, scientific, technological or cultural work; and scholarships for professional development, provided that the sponsoring organisation has no interest in decisions taken by the official. In the event that refusal or immediate return of a gift is not feasible, high public officials must either hand over the gift to the National Institute for Historical and Artistic Heritage in the case of historical, cultural or artistic value or donate the gift to a charity or a philanthropic organisation recognised by the federal government.

Box 4.1. **Examples of binding resolutions by Brazil's Public Ethics Commission: participation in external activities, receipt of gifts and managing conflict of interest** *(cont'd)*

On managing conflicts of interest: Resolution no. 8/2003 guides high public officials in managing potential conflicts of interest, both in terms of assets and activities (*e.g.* volunteer work in not-for-profit organisations). It outlines the general actions that may be taken, noting that the Public Ethics Commission should be informed by high public officials and will issue an opinion with regards to the adequacy of the measures adopted. General actions include disposing of property and assets that may give rise to a conflict of interest; transferring the administration of the assets that may create a potential conflict of interest to a blind trust or giving up any activities or licenses for the period in which a conflict may arise. In the case of possible specific and temporary conflicts, officials should notify their superior or other members of the advisory body to which they belong, refraining from voting or participating in any discussions on the subject until the potential conflict ceases.

Note: Conversion has been done using the exchange rate from 8/10/2010, BRL 1.0000 = USD 0.5979; BRL 1.000 = EUR 0.4294.

Source: Adapted from Public Ethics Commission Resolutions no. 2/2000, 3/2000 and 8/2003.

A bill regulating conflict of interest and the use of privileged information, including in post-public employment contexts, is currently under discussion in the National Congress. The management of conflicts of interest is currently regulated by Public Ethics Commission Resolution no. 8/2003 and Federal Decree no. 4 187/2002 for high officials, and Federal Law no. 9 986/2000 for officials working in federal regulatory agencies. Originally proposed by the Office of the Comptroller General of the Union, the federal executive advocates the bill as necessary for enhancing integrity domestically and bringing Brazil in line with international standards.[4] Bill no. 7 528/2006, as it was drafted at the time this chapter was written, defines a conflict of interest as a situation that is generated by the diverging stakes between an official's private interest and their public function. It defines privileged information as information that entails a high level of secrecy or information that is relevant to the decision-making processes in the federal public administration that may have economic or financial repercussions.

If passed in its current form, Bill no. 7 528/2006 would bring about four main changes. First, it would broaden the application of conflict of interest rules to include level 5 supervisory and management officials and other officials holding positions with access to privileged information that could bring economic or financial advantage to the official or to a third party. Second, it would broaden the scope of application of conflict of interest rules according to responsibilities instead of grade, *i.e.* it would include a lower level official acting on behalf of a higher level official. Third, it would extend the cooling-off period to one year following the departure of regulated officials from office in order to avoid the possibility of a post-employment conflict of interest. Current rules in Brazil only establish a four-month cooling-off period. In contrast, the majority of OECD member countries have a general cooling-off period ranging from between one and two years (OECD, 2010b). Finally, it would give the Office of the Comptroller General of the Union responsibility for monitoring, evaluating and investigating possible conflicts of interest for level 5 supervisory and management officials and other officials holding positions with access to privileged information.

Box 4.2. **Reviewing the strengths and weaknesses of post-public employment systems: "OECD Post-Public Employment Principles"**

The principles for managing post-public employment conflict of interest in the public service (the "Post-Public Employment Principles") organise essential components of a post-public employment system. The principles provide a point of reference against which policy makers and managers in public sector organisations can review the strengths and weaknesses of their current post-public employment system and modernise it in light of their specific context, including existing needs and anticipated problems.

Problems arising primarily while officials are still working in government

1. Public officials should not enhance their future employment prospects in the private and not-for-profit sectors by giving preferential treatment to potential employers.
2. Public officials should disclose their seeking or negotiating for employment and offers of employment that could constitute conflict of interest in a timely manner.
3. Public officials should disclose their intention to seek and negotiate for employment and or accept an offer of employment in the private and not-for-profit sectors that could constitute conflict of interest in a timely manner.
4. Public officials who have decided to take up employment in the private and not-for-profit sectors should, where feasible, be excused from current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.
5. Before leaving the public sector, public officials who are in a position to become involved in conflict of interest should have an exit interview with the appropriate authority to examine possible conflict of interest situations and, if necessary, determine appropriate measures for remedying.

Problems arising primarily after public officials have left government

6. Public officials should not use confidential or other "insider" information after they leave the public sector.
7. Public officials who leave the public sector should be restricted in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter limit, time limit or "cooling-off" period may be imposed.
8. The post-public employment system should take into consideration appropriate measures to prevent and manage conflict of interest when public officials accept appointments to entities with which the officials had significant official dealings before leaving the public sector. An appropriate subject matter limit, time limit or cooling-off period may be required.
9. Public officials should be prohibited from "switching sides" and represent their new employer in an ongoing procedure on a contentious issue for which they had responsibility before they left the public sector.

Box 4.2. **Reviewing the strengths and weaknesses of post-public employment systems: "OECD Post-Public Employment Principles"** *(cont'd)*

Duties of current officials in dealing with former public officials

10. Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.

11. Current public officials who engage former public officials on a contractual basis to do essentially the same job as the former officials performed when they worked in the public organisation should ensure that the hiring process has been appropriately competitive and transparent.

12. The post-public employment system should give consideration to how to handle redundancy payments received by former public officials when they are re-employed.

Responsibilities of organisations that employ former public officials

13. Private and not-for-profit organisations should be restricted in using or encouraging officials who are seeking to leave or who have left government to engage in activities that are prohibited by law or regulation.

Source: OECD (2010), *Post-Pubic Employment Good Practices for Preventing Conflict of Interest*, OECD Publishing, Paris, doi: 10.1787/9789264056701-en.

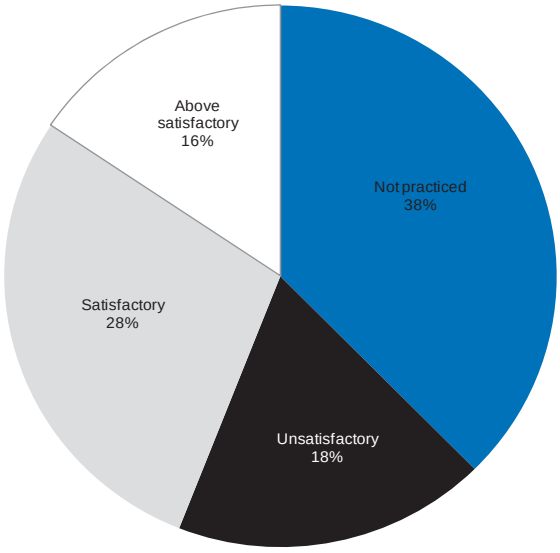
Increasingly, standards of conduct are being renewed, drawing on an understanding and analysis of specific risks. This can be done by mapping out "at risk" processes (*e.g.* procurement, promotion of staff members, inspection, etc.) and sensitive functions (typically those involved in sensitive processes or in decision making in general) in order to identify points where there is a significant vulnerability for misconduct. In Brazil, a 2010 Public Ethics Commission survey indicated that 44% of all federal public organisations perceived their routines for identifying areas, processes or functions susceptible to misconduct as satisfactory or above satisfactory (see Figure 4.2). Another 56% of federal public organisations perceived their routines to be unsatisfactory or nonexistent. There are two caveats to this survey, however. First, there are no formal guidelines or good practice notes issued by the Public Ethics Commission, or Office of the Comptroller General of the Union, as to what constitutes a routine or how these organisations could approach identifying areas, processes or functions susceptible to misconduct. Second, the survey was completed by public organisations themselves and has not been independently verified by either the Public Ethics Commission, the Office of the Comptroller General of the Union or any other body.

In Brazil, the Office of the Comptroller General of the Union is currently in the process of developing a generic risk-management methodology to guide decision makers and public managers in assessing vulnerabilities to misconduct and corruption in their respective programmes and areas of operations. It has developed two methodologies to date: a Methodology for Mapping the Risks of Corruption (*Metodologia de Mapeamento de Riscos de Corrupção*) in partnership with Transparência Brasil (2006) and a Methodology for Risk Assessment (*Metodologia de Gerenciamento de Risco*) (2010). They afford a great opportunity for public officials to deepen their knowledge of different working processes within the institutions as a basis for improving management processes before any deviations occur. Whereas these risk management methodologies are

conceptualised to identify the risk of bias and waste in decision making, they could also be used to identify potential conflict of interest situations and develop more organisational or programme-specific standards of conduct. The process of developing these methodologies and the difference in their approach is discussed in Chapter 3.

Figure 4.2. **Do public organisations have routines for identifying areas, processes or functions susceptible to misconduct?**

Results of Public Ethics Commission Annual Ethics Management Survey, 2010



Source: Public Ethics Commission.

The use of consultation in developing codes of conduct is not mandatory within Brazil's federal public administration

Consultation can contribute to better understanding the concerns and expectations of public officials and stakeholders as input towards defining standards of conduct. The use of consultation in defining standards of conduct is a fairly recent development, but its benefits are increasingly understood and emphasised in OECD member countries. Due to limited resources, the commission has not engaged in consultation when developing its resolutions. The Public Ethics Commission identifies topics requiring additional guidance based on analysis of public concern articulated in television, radio and print media. However, the Council on Public Transparency and Combating Corruption provides one forum for consultation on standards of conduct and ethics management. The current bill on conflict of interest under discussion in the National Congress is one example of using consultation. Within the council, a working group comprised of members from government and non-governmental organisations was established to define what constitutes a conflict of interest, an appropriate period of quarantine (*i.e.* post-public employment restrictions) and the responsibilities of individual officials in managing potential conflicts of interest. The recommendations generated within the council were used by the Office of the Comptroller General of the Union in drafting Bill no. 7 528/2006 on conflict of interest (see Chapter 2).

Consultation has been used in the development of codes of conduct within some individual public organisations. Box 4.3 provides a discussion of the process to develop a

code of conduct within the Office of the Comptroller General of the Union. The Secretariat of Federal Revenue is exploring the use of consultation in developing its own code of conduct. A draft code has been developed as the basis for launching a consultation with officials at various levels within the Secretariat of Federal Revenue. It is not proposed to engage other stakeholders, *i.e.* representatives of different taxpayer groups, in the consultation process. To support the consultation, the Secretariat of Federal Revenue Inspectorate General has created an electronic tool to allow federal tax officials to review the text of the proposed code and amend it as they see fit. Originally, consultations were planned for the second semester of 2008 but, due to changes within the Secretariat of Federal Revenue leadership, the consultation has yet to be realised. The Secretariat of Federal Revenue Inspectorate General still intends on launching a consultation process as a basis for registering officials' concerns and expectations as input into defining expected standards of conduct. While the Secretariat has no plans to launch an external consultation process, this could be an opportunity to reiterate its efforts to strengthen integrity.

Box 4.3. **Consultation in the development of an organisation-specific code of conduct in Brazil: the experience of the Office of the Comptroller General of the Union**

The Professional Code of Conduct for Public Servants of the Office of the Comptroller General of the Union was developed with input from Office of the Comptroller General of the Union public officials during a consultation period of one calendar month, between 1 and 30 June 2009. Following inclusion of the recommendations, the Office of the Comptroller General of the Union Ethics Committee issued the code. In the development of this code, a number of recurring comments were submitted, including: *i)* the need to clarify the concepts of moral and ethical values, arguing that the related concepts were too broad in definition and required greater clarification; *ii)* the need for a sample list of conflict of interest situations, to support public officials in their work; and *iii)* the need to clarify provisions barring officials from administering seminars, courses and other activities, whether remunerated or not, without authorisation of the competent official.

A number of concerns were also raised concerning the procedures for reporting suspected misconduct and the involvement of Office of the Comptroller General of the Union officials in external activities. Some Office of the Comptroller General of the Union officials inquired whether reports of misconduct could be filed without identifying other officials and whether the reporting official's identity would be protected. Concern was also raised over the provision requiring all Office of the Comptroller General of the Union officials to be accompanied by another Office of the Comptroller General of the Union official when attending professional gatherings, meetings or events held by individuals, organisations and associations with an interest in the progress and results of Office of the Comptroller General of the Union work. This concern derived from the difficulty in complying with the requirement given the time constraints on Office of the Comptroller General of the Union officials and the significant demands of their jobs.

Source: Office of the Comptroller General of the Union.

However useful consultation may be, its limitations must be kept in mind. First, while public officials and stakeholders may help to define standards of conduct, they should not have the final word. Their input, while very useful and important, is not the ultimate criterion for defining standards of conduct. Second, and more practical in nature, consultations may require substantial resources – time, energy and possibly funds. If stretched too long, the process of determining standards of conduct may lose momentum and its impact. Some pragmatic limitation in the consultation process – considering the best use of available resources – may, therefore, be appropriate.

Central authorities co-ordinate efforts for promoting high standards of conduct and investigating ethical breaches and administrative misconduct

The Public Ethics Commission was established in 1999 to foster high standards of conduct within the federal public administration. At the time, the pressing challenges were to: *i)* capture the attention of citizens on what constitutes appropriate standards of conduct by public officials; *ii)* translate the concept of appropriate standards of conduct into simple and easy-to-apply rules; *iii)* implement these rules among high public officials; and *iv)* promote the broader application of acceptable conduct by all public officials (CEP, 2001). Over time the role of the commission has oriented itself to improve the quality and coherence of ethics management within the federal public administration and to create awareness of standards of conduct at sub-central levels government (CEP, 2003). More recently, a growing emphasis has been placed on systematically evaluating ethics management within the federal public administration (CEP, 2006).

As mentioned, the Public Ethics Commission has three main functions, among them co-ordinating, evaluating and supervising the activities of ethics committees within federal public organisations. The commission is composed of seven Brazilian citizens appointed for a staggered term of three years by the President of the Republic, with the possibility of extension for one additional term.[5] They are selected based on their high moral character, and have a flawless reputation and experience related to the public administration.[6] Members meet once every month for a full day but may also convene at the initiative of any of its members. Members do not receive any remuneration for their work on the commission.[7] The commission's technical and administrative activities are supported by an executive secretariat, linked to the Civil House of the Office of the President of the Republic. The executive secretariat is organised into two groups: one responsible for the monitoring of the Code of Conduct for the High Officials in the Federal Public Administration; the other responsible for its ethics promotion programme. There are 9 full-time officials working in the commission's executive secretariat; this has remained stable since its creation in 1999. During this same period, however, the commission's budget has more than doubled from BRL 150 000 (USD 90 000; EUR 66 000) to BRL 320 000 (USD 190 000; EUR 140 000).

All federal public organisations, both within the direct and indirect public administration, are obliged under Federal Decree no. 1 171/1992 to establish an ethics committee.[8] Box 4.4 provides a description of the composition and principles. These committees are to provide guidance and advice to public officials on standards of conduct and ethical dilemmas in their interaction with citizens and management of public resources. In order to build capacity of the ethics committees within individual federal public organisations, the Public Ethics Commission conducts training activities on a periodic basis. The training syllabus provides a conceptual overview of ethics and the Ethics Management System of the Federal Public Administration. The Public Ethics Commission conducts dissemination and training activities (*e.g.* events, courses,

seminars, forums and meetings) for about 500 public officials ever year (see Table 4.2). Courses and workshops touch upon issues such as ethics management and ethics procedures to enable high officials to lead by example and ethics committee members to adopt standardised procedures (see Box 4.5).

Box 4.4. **Ethics committees in Brazil's federal public organisations: statutory basis, composition and principles**

Federal Decree no. 1 171/1992 obliges every federal public organisation is to establish an ethics committee to guide and advise public officials on standards of conduct in dealing with people and public property. The activities of these committees are further articulated by Federal Decree no. 6 029/2008 establishing the Ethics Management System of the Federal Public Administration and Public Ethics Commission Resolution no. 10/2008.

Each committee is comprised of three members and three deputies chosen from among permanent public officials and appointed by the head of the respective public organisation. Members are appointed for a staggered term of three years, with the possibility of extension for one additional three-year term. The president of the ethics committee will be replaced by the longest-serving member, in their absence or vacancy. Restrictions exist on who cannot occupy a position on an ethics committee. For example, the head or an executive secretary of a public organisation cannot be a member of an ethics committee. In the case where a public organisation has insufficient permanent public officials, committee members may be selected from the broader federal public administration provided that they are public officials.

Ethics committee members meet at least once per month and extraordinarily at the initiative of the president, members or executive secretary of the committee. Deliberations of the committee are taken by majority vote of its members. Each ethics committee is supported by an executive secretariat, attached administratively to the highest public official of the organisation. The executive secretariat provides technical and material support as necessary for the committee to accomplish its tasks. Committees may appoint local representatives to assist in disseminating and communicating its work. It is the responsibility of the head of the public organisation to ensure adequate working conditions for the committee to fulfil its function, including the exercise of the committee member's duties.

Committee members are expected to adhere to a number of principles including upholding the honour and image of persons under investigation; protecting the identity of the complainant; and acting in an independent and impartial manner. They are also obliged to inform other members of any conflict of interest, potential and actual, that they have in fulfilling their functions in the committee. Where a potential conflict of interest exists, the member is to refrain from participating in the procedure and decision.

Conflicts of interest for committee members occur when a member: *i)* has a direct or indirect interest in the action; *ii)* has participated, or will participate, in other administrative or judicial proceedings as an expert witness or legal representative of the reporting or investigated official, or their respective spouses, friends or relatives; *iii)* is in court action judicially or administratively to the reporting or investigated official, or with their spouses, partners or relatives, or is a spouse, partner or relative of the reporting or investigated official. It also includes when the member is a close friend or acknowledged disaffection of the reporting or investigated official, or their spouse, friends or relatives, or a creditor or debtor of the reporting or investigated official, or their respective spouses, friends or relatives.

Table 4.2. **Training for members of ethics committees in Brazil's federal public organisations**

By activity type, number of participants

Activities	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Events (undefined)	218	0	0	0	0	0	0	N/A	N/A	N/A
Meetings (undefined)	0	516	0	0	0	0	0	N/A	N/A	N/A
Courses, including ethics management and ethics process	0	263	96	165	361	280	234	N/A	N/A	N/A
Seminars, including ethics management	0	0	700	201	184	234	0	N/A	N/A	N/A
OECD/IDB Forum on Curbing Conflicts of Interest in the Public Service	0	0	0	192	0	0	0	N/A	N/A	N/A
Distance education	0	0	0	0	0	0	203	N/A	N/A	N/A
Total	218	779	796	558	545	497	514	N/A	N/A	N/A

Notes: N/A = not available.

Source: Public Ethics Commission.

Box 4.5. **Brazil's Public Ethics Commission training activities for members of federal public organisations' ethics committees**

Ethics management course

General objectives: to train the network of officials with responsibility for managing ethics in the federal public administration in order to contribute to the effective dissemination and promotion of public service values in their respective organisations.

Specific objectives:

- to establish benchmarks for ethics management, including concepts, rules, actors, training guidelines and strategies for ethics management;
- to evaluate ethics management, including the use of the "Organisation Perception Assessment Questionnaires", assessment of case management files, ethics management reports and officials' standards of conduct;
- to disseminate information on the Public Ethics Commission's work, recommendations and guidance on rules and regulated matters pertaining to ethical conduct within the federal public administration; and
- to present and discuss work plans for the implementation of ethics management within federal public organisations.

Ethics process course

General objectives: to train members of the ethics committees of individual federal public organisations in ethics investigations, from formalisation, investigation and completion of procedures, and the use of supporting tools, in accordance with Public Ethics Commission Resolution no. 10/2008.

Box 4.5. **Brazil's Public Ethics Commission training activities for members of federal public organisations' ethics committees** *(cont'd)*

Specific objectives:

- to standardise procedures and streamline the verification of ethical conduct and sanctioning of breaches of ethical conduct conducted by individual ethics committees;
- to provide support to ethics committees to monitor the ethical conduct of public officials within their respective public organisations;
- to formalise the process of receiving reports and complaints; the guarantee of right of challenge and full defense; confidentiality of procedures; management of investigations, decisions and appeal processes; notification of interested parties and public officials of investigations and trials; publication of recommendations, penalties and other necessary procedures;
- to develop flowcharts and processes for the investigation of ethical breaches, together with other worksheets, forms and models to support the process;
- to establish a conceptual framework to determine whether or not an ethical breach has occurred for the purpose of issuing a recommendation, penalty and other necessary procedures; and
- to provide advice on ethics committees standards of organisation and operation.

Ethics management seminar

General objectives: to contribute to the effectiveness and sustainability of actions to promote ethics and create conditions for achieving the goals and guidelines established in the 2008-11 Pluri-Annual Plan.

Specific objectives:

- to share experiences and tools for ethics management in the federal public administration;
- to evaluate progress and implementation of ethics management in the federal public administration; and
- to promote discussion on topics related to ethics between public officials and experts.

Source: Public Ethics Commission.

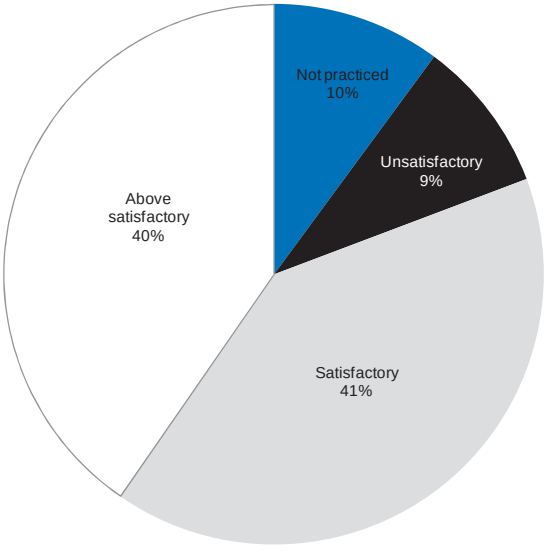
Co-ordination between the Public Ethics Commission and the various ethics committees is supported by the Ethics Management System of the Federal Public Administration. Launched in February 2007, the system comprises the Public Ethics Commission and all ethics committees within individual federal public organisations. It has three objectives: *i)* to support the implementation of policies for enhancing transparency and access to information as key instruments in enhancing standards of conduct; *ii)* to align the technical procedures and protocols for promoting high standards of conduct across the federal public administration; and *iii)* to implement procedures for increasing the performance of ethics management in public organisations. The system formalised the Ethics Network of the Federal Public Administration, which has existed

since 2001. The decision to create a more formal arrangement was based on the review and recommendation by the Committee of Experts of the Inter-American Convention Against Corruption published in March 2006.

A 2008 Office of the Comptroller General of the Union survey of 206 federal administrative units found that 151 (73%) had established an ethics committee. (The term "administrative unit" is that used for audit purposes; they may be a public organisation or functional secretariat therein.) Of these 151 ethics committees, 115 (76%) had 3 permanent members and 3 substitute members, as required by Federal Decree no. 1 171/1994. In only 92 (61%) ethics committees had members participated in capacity building activities related to their committee responsibilities. More recently, a 2010 Public Ethics Commission survey indicated that 81% of federal public organisations perceive their ethics committees complies with the requirements of Federal Decree no. 1 171/1994 (see Figure 4.3). The same survey found that 55% of all federal public organisations perceive that the work plans of their ethics committees are satisfactorily linked to the broader planning activities of their respective organisations (see Figure 4.4). As mentioned, the survey was completed by public organisations themselves and responses have not been independently verified by the Public Ethics Commission, the Office of the Comptroller General of the Union or any other body. In addition, because of the difference in survey methods of the Office of the Comptroller General of the Union in 2008 and Public Ethics Commission in 2010, it is difficult to assess whether there has been an improvement with respect to compliance with Federal Decree no. 1 171/1994.

Figure 4.3. **Does an ethics committee exist in accordance with federal government rules?**

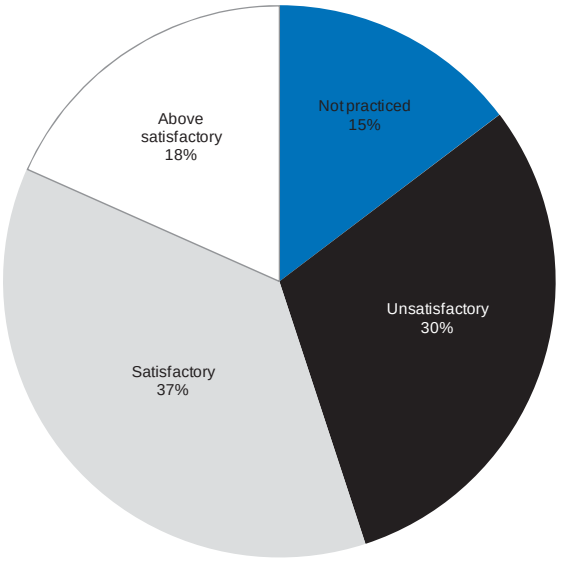
Results of Public Ethics Commission Annual Ethics Management Survey, 2010



Source: Public Ethics Commission.

Figure 4.4. **Is the work plan of the ethics committee housed in the planning of the organisation?**

Results of Public Ethics Commission Annual Ethics Management Survey, 2010



Source: Public Ethics Commission.

The Inspectorate General was established in 2001 as a new function within the federal public administration. It was intended to provide effective and efficient sanction of administrative misconduct by public officials while criminal investigations and prosecution were being processed in the federal judiciary. It conducts investigations, either *ex officio* or upon receipt of a credible report, of possible administration misconduct by federal public officials. The Inspectorate General is responsible for co-ordinating, evaluating and supervising the activities of inspectorates and disciplinary committees within federal public organisations. As part of these activities, it has established mechanisms for data integration of the results of administrative investigations and sanctions. This information is used to propose measures for preventing administrative misconduct and reinforcing standards of conduct. The Inspectorate General may also initiate or intervene in administrative investigations and disciplinary procedures where it considers a specific case to be to complex or questions the independence of an inspectorate. It may also investigate the failure of public organisations to establish an investigation or disciplinary procedure. The Inspectorate General is organised into three departments covering economic, social and infrastructure policies and staffed by approximately 200 officials (see Table 4.3).

Table 4.3. **Organisation of Brazil's Inspectorate General of Administrative Discipline, 2010**

Sub-inspectorate	Divisions
Economic	Federal Ministries of Agriculture, Fisheries and Aquaculture (under one division)
	Federal Ministry of Agrarian Development
	Federal Ministry of Finance
	Federal Ministries of Development, Industry and Trade, and Tourism (under one division)
	Federal Ministry of Planning, Budget and Management
	Federal Ministry of Foreign Affairs
Social	Federal Ministries of Sports and Culture (under one division)
	Federal Ministry of Social Development and Fight Against Hunger
	Federal Ministry of Education
	Federal Ministry of Justice
	Federal Ministry of Social Welfare
	Federal Ministry of Health
	Federal Ministry of Labour and Employment
Infrastructure	Federal Ministry of Cities
	Federal Ministries of Science and Technology, and Communications (under one division)
	Federal Ministry of Defence
	Federal Ministry of the Environment
	Federal Ministry of Mines and Energy
	Federal Ministry of Transport
	Federal Ministry of National Integration

Source: Inspectorate General of Administrative Discipline, Office of the Comptroller General of the Union.

All federal public organisations are required by law to have a department (*e.g.* human resources department) responsible for handling administrative discipline and forwarding them where applicable to a higher authority for investigation. In recent years, the number of public organisations with their own inspectorate (*Corregedorias Seccionais*) has grown. In 2010 there were 32 inspectorates in federal public organisations, 7 were in the process of being established and a further 23 were planned (see Table 4.4). These inspectorates are responsible for conducting impartial investigations and disciplinary proceedings – as well as supervising investigations and disciplinary procedures carried out by subordinate organisations under their jurisdiction, as applicable – maintaining an updated register of the progress and outcome of investigations and disciplinary proceedings and sharing consolidated data with the Inspectorate General of Administrative Discipline. This increase is attributed to the actions of the Inspectorate General. In 2007 and 2008, it surveyed federal public organisations' capacity (*i.e.* size, proven past performance, etc.) and encouraged many to create their own inspectorate. The Inspectorate General of Administrative Discipline cannot interfere in the management of public organisations; it can only make recommendations.

In 2003, the Inspectorate General of Administrative Discipline began a permanent training programme for officials working in these inspectorates and others involved in conducting administrative investigations. The programme was conducted in partnership with the National School of Finance Administration. Within this partnership, the Inspectorate General develops the curriculum and provides instructors and the National School of Financial Administration provides all the logistical support. By using its own instructors, the Inspectorate General reduces the per student cost of the training. All material is supplied free of charge to participants and is available online.[9] The current programme is 27 hours in duration. The Inspectorate General is also developing a distance learning programme.

Table 4.4. **Inspectorates within Brazil's federal public organisations, 2010**

Federal ministry	Existing	Being established	Proposed
Federal Ministry of Sports	0	1	0
Federal Ministry of Education	0	1	20
Federal Ministry of Justice	5	0	0
Federal Ministry of Social Security	3	0	0
Federal Ministry of Health	3	0	0
Federal Ministry of Labour	1	0	0
Federal Ministry of Agricultural Development	1	1	0
Federal Ministry of Agriculture, Livestock and Supply	2	0	0
Federal Ministry of Environment	1	1	0
Federal Ministry of Finance	4	0	0
Federal Ministry of Planning, Budget and Management	0	0	1
Federal Ministry of Foreign Affairs	1	0	0
Federal Ministry of Communication	2	0	0
Federal Ministry of Science and Technology	0	0	1
Federal Ministry of Defence	1	0	1
Federal Ministry of National Integration	1	0	0
Federal Ministry of Minerals and Energy	3	0	0
Federal Ministry of Transport	4	0	0
Federal Ministry of Tourism	0	3	0
Total	32	7	23

Source: Inspectorate General of Administrative Discipline, Office of the Comptroller General of the Union.

Co-ordination between the Inspectorate General of Administrative Discipline and inspectorates and investigative committees within individual public organisations is achieved through the Administrative Disciplinary System of the Federal Public Administration. Launched in June 2005, the system aims to promote integrity by: *i)* proposing measures for promoting the integration of the federal public administration's disciplinary system; *ii)* promoting integration with other control and audit activities; and *iii)* proposing methods for the standardisation and improvement of procedures relating to the disciplinary system. The commission's membership comprises of the Comptroller General of the Union, the Executive Secretary of the Office of the Comptroller General of the Union, the Deputy Inspector General and other senior inspectors, as well as the representatives of inspectorates from federal public organisations

Table 4.5. **Training of officials working in inspectorates and involved in administrative investigations**

Number of participants

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Participants	0	0	808	845	831	1 064	1 258	1 064	1 525	1 928

Source: Inspectorate General of Administrative Discipline, Office of the Comptroller General of the Union.

Brazil's ethics legal framework establishes sanctions for ethical breaches and administrative misconduct, including illicit enrichment

Sanctions for ethical breaches and administrative misconduct include written warning, suspension for up to 90 days, dismissal and possible forfeiture of retirement benefits. Violations of the code of conduct, absenteeism and refusing to perform duties

are subject to a written warning. In the case of recurring violations of a code of conduct, or more serious misconduct such as engaging in any activities incompatible with one's public office or function, a suspension for up to 90 days applies. The penalty of suspension entails the automatic cancellation of remuneration to the public official during the period of suspension.[10] Penalties of written warning and suspension are removed from a public official's personnel file after three and five years, respectively, if the public official has not committed any subsequent breaches of integrity. More serious misconduct, such as using one's public office or function to have irregular advantage, acting as a private agent or intermediary before public offices, expressing grievous insubordination on the job, irregular expenditure of public funds and corruption, may result in dismissal. The dismissal may also prohibit an individual from employment within the federal public administration for a period of five years or more. Thereafter, the employment of an individual previously dismissed from office may only take place after all losses to the state treasury have been paid in full (see Annex 4.A2).

In addition to administrative sanctions, acts of misconduct by federal public officials are subject to criminal and civil sanctions. Administrative, criminal and civil penalties may be cumulatively levied independently of one another. The Criminal Code outlines penalties for embezzlement, misuse of public funds, facilitation of smuggling and embezzlement, malfeasance, dereliction of duty and breach of confidentiality, including in public procurement.[11] These penalties range from 1 month for the misuse of public funds to 12 years for passive bribery, entering false data into government information systems and embezzlement (see Annex 4.A3).

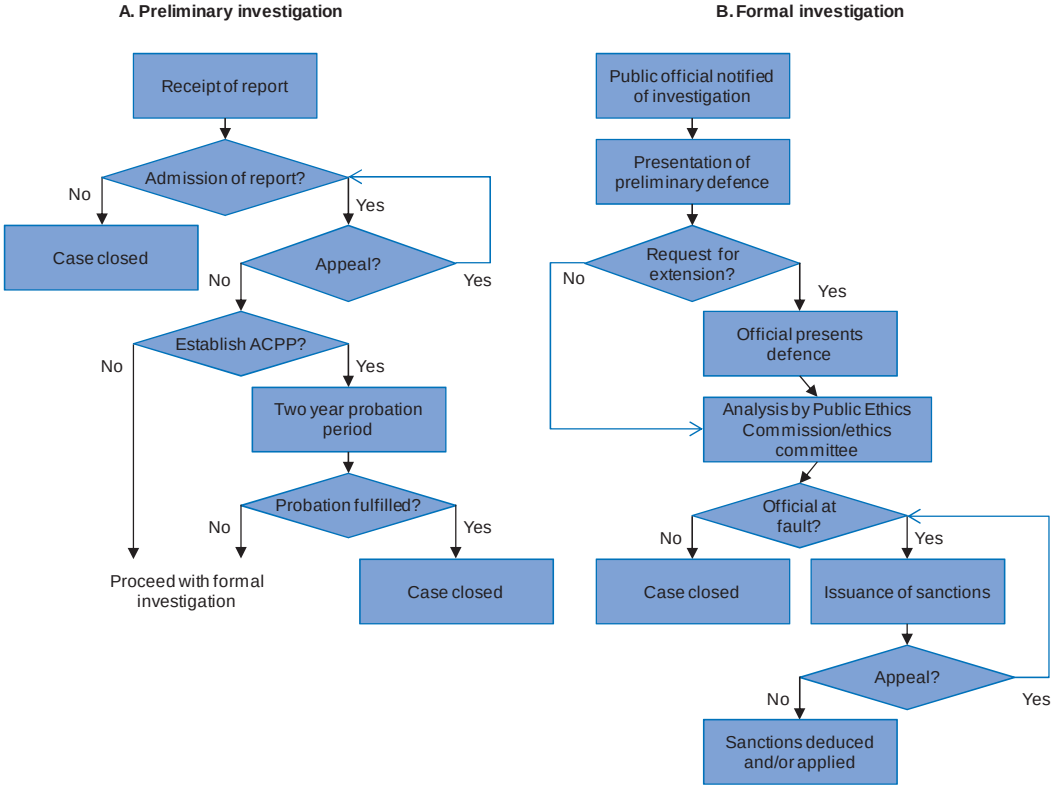
Procedures to investigate ethical breaches and administrative misconduct provide a fair process with due regard to an official's right of defence

Federal Decree no. 6 029/2008 establishing the Ethics Management System of the Federal Public Administration defines the general procedures for investigating ethical breaches. Investigations of ethical breaches are carried out by the Public Ethics Commission in the case of high officials and by individual public organisation's ethics committees for all other public officials. Public Ethics Commission Resolution no. 10/2010 guides the activities and procedures for the ethics committees. The commission/committees may launch an investigation, *ex officio* or upon submission of a well-founded report, into breaches of the relevant code of conduct. Submissions may be made by any citizen, public official or legal person under private law or business association. Where a commission/committee identifies that the violation committed by the public official also constitutes a breach of administrative, civil and criminal law, a copy of the case files is shared with the Inspectorate General of Administrative Discipline, the Office of the Federal Public Prosecutor or the Department of Federal Police. The legal advisory units within each federal public organisation assist ethics committees when they have doubts whether a well-founded report constitutes more than an ethical breach.

Figure 4.5 outlines the ordinary process for investigating ethical breaches. During a preliminary investigation the commission/committees may provide the public official with the opportunity to recognise a breach of the code. In such cases, a Proposal of Agreement for Professional or Personal Conduct (ACPP) is formulated between the public official and the commission/committee highlighting the actions to be taken by the public official to prevent a recurrence of the same ethical breach. The agreement also establishes a probationary period of two years after which, if the public official follows the terms of the agreement, the case is closed (see Figure 4.5a). If the public official does

not accept a Proposal of Agreement for Professional or Personal Conduct, or in cases where the commission/committee considers it inappropriate because of the magnitude of the ethical breach, a full investigation is launched (see Figure 4.5b) Information on the number of Proposal of Agreement for Professional or Personal Conduct was not available.

Figure 4.5. **Ordinary process for investigation of ethical breaches within Brazil's federal public administration**

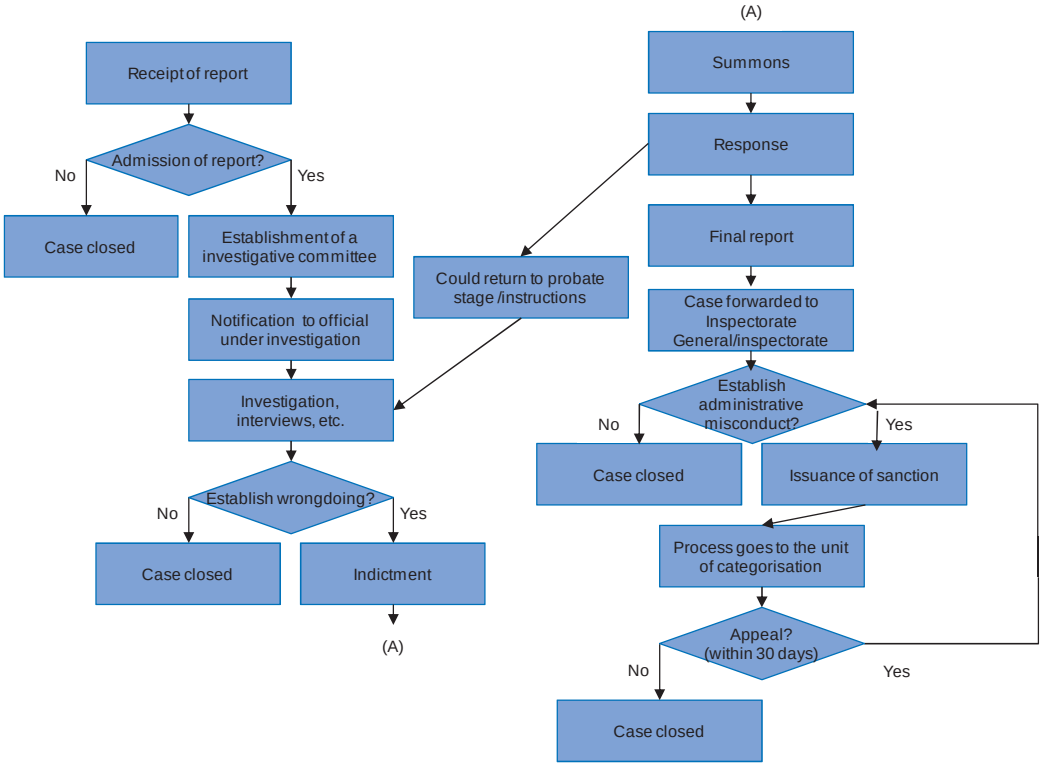


Source: Inspectorate General of Administrative Discipline, Office of the Comptroller General of the Union.

In guiding the investigation, Federal Decree no. 6 029/2008 and Public Ethics Commission Resolution no. 10/2010 establish that the work of the commission/ethics committees must be conducted in a timely fashion with their respective members acting in an independent and impartial manner. The commission/committee must notify the official under investigation to present a written defence and to list up to 4 witnesses and any supporting evidence within 10 days. One 10 day extension may be granted when considered necessary by the commission/committee. Further, commission/committee members are obliged to take necessary actions to protect both the reputation of the official under investigation and the identity of the reporting person during the investigation. Upon completing the investigation and following the deliberation and issuance of sanctions by the commission/committee the respective case files are no longer deemed confidential. As the case files include documents covered by legal confidentiality requirements, access to said documents is restricted to individuals with the minimum required legal status before the public organisation originally charged with their custody.

Figure 4.6 outlines the ordinary process for investigating administrative misconduct. Federal Law no. 8 112/1990 defines the general procedures for investigating administrative misconduct. In general, the admissibility of initial information is contingent on a precise indication of the alleged irregularity (connected to the performance of the public office). If the report includes sufficient information, the Inspectorate General of Administrative Discipline opens a preliminary investigation or an administrative disciplinary proceeding, in accordance with the specific case. In the absence of sufficient evidence to open an investigation, the information is filed. In all cases, the documentation submitted remains confidential and the identities of the reporting person and the official protected. Administrative disciplinary investigations are subject to a statute of limitations of: *i)* 180 days for disciplinary action with maximum sanction of written warning; *ii)* 2 years for suspension of up to 90 days; and *iii)* 5 years for dismissal. This does not include the statute of limitations for criminal investigations that are regulated by the Criminal Code.

Figure 4.6. **Ordinary procedures for investigating administrative misconduct within Brazil's federal public administration**



Source: Inspectorate General of Administrative Discipline, Office of the Comptroller General of the Union.

Investigations into administrative misconduct are conducted by a committee composed of three permanent public officials. The chair of the committee must be of equal or higher grade, or have an equal or higher level of education, than the official under investigation. Spouses, partners or relatives of the investigated official or any other person with interests at stake cannot participate in the committee. The committee is obliged to perform its activities in an independent and impartial manner, and maintain the necessary level of confidentiality to protect the public interest. The meetings and hearings

of the committee are closed and attendance is restricted to interested parties. Investigative committees have 60 days to conclude their reports, extendable under justification of another 60 days. The ruling authority subsequently has 20 days to render its decision, together with a report of facts established and the penalty. Members of the investigative committee may be relieved of their regular duties for the duration of the proceedings and until the release of a final disciplinary report. Courts have decided that expiration of this legal deadline cannot stop investigations nor preclude the ruling authority from imposing sanctions. In the event that the investigation concludes there has been criminal misconduct, the authority must send a copy of the case files to the Office of the Federal Public Prosecutor.

Public officials under investigation for administrative misconduct have a number of rights. They have the right to be notified of the investigation, to access and to obtain copies of the documents related to their investigation and to present a defence against the allegations. The investigated official is allowed to follow the proceedings in person or through a proxy, introduce and cross-examine witnesses and produce counter-evidence provided that it does not interrupt the proceedings of investigation. The committee chair may deny requests by the investigated official as irrelevant to the case. Federal public organisations must give priority to requests from a disciplinary committee and cannot claim confidentiality to withhold information requested by a disciplinary committee. Where witnesses are public officials, the summons by the committee are addressed to the official's immediate superior, together with information on the date and time scheduled for the hearing. As a precautionary measure, officials under investigation may be granted leave from their post for up to 60 days, extendable for another 60 days if the investigation is extended, in cases where their presence in their workplace can be harmful to the investigation. Officials continue to receive full remuneration during the investigation.

Effectively guiding and assessing standards of conduct

A major challenge for promoting standards of conduct in Brazil and OECD member countries alike is the need to move beyond the existence of formal systems and place emphasis on the adoption of codes of conduct (da Matta, 2001; OECD, 2005). A sound ethics management system requires examining progress made by the federal public administration to guide and monitor standards of conduct held by public officials in their daily activities. In Brazil this has been supported by a combination of routine dissemination, training and counselling on standards of conduct by various authorities and individual public managers. Many measures common in OECD member countries are used by the federal government of Brazil. For example, public officials are required to make periodic private interest disclosures as a basis for detecting illicit enrichment and, in the case of high officials, managing potential conflicts of interest. Public officials are also obliged to report suspected misconduct – though a question exists as to whether adequate protection exists for those that come forward. These complement structural measures that constrain the actions of individual public officials, such as risk-based internal control, transparency and accountability mechanisms. Progress has also been made in verifying the functioning of the systems for promoting high standards of conduct, albeit not always in a co-ordinated and consistent manner.

Efforts to raise awareness of standards of conduct among federal public officials are conducted through socialisation, training and counselling

Socialisation is the process by which public officials develop an awareness and understanding of standards of conduct. In Brazil, as in many OECD member countries, socialisation begins during the recruitment process for entry into the federal public administration and continues throughout a public official's career on a periodic and ongoing basis. Codes of conduct are periodically communicated to public officials, *e.g.* when they take up new positions/functions and following the revision or update of the codes. This ensures that new entrants are introduced to the organisation's standards of conduct, as well as changes to standards and citizens' expectations. Public managers also make reference to the codes in speeches and day-to-day operations, and information on the codes is posted within the workplace. In addition, individual public organisations' ethics committees are reported to engage in awareness-raising activities.

A 2008 Office of the Comptroller General of the Union survey highlights that less than half of all ethics committees hold socialisation activities at least annually. It found that of the 151 ethics committees (in 206 federal administrative units), only 72 (48%) had conducted at least one action during the previous 12 months. Where measures did exist the most common were capacity-building events regarding the content of codes of conduct (in 37, or 25% of administrative units with an ethics committee) and educational materials (*i.e.* study aids, brochures, pamphlets, etc.) on the Code of Professional Ethics for Public Officials in the Federal Public Administration and their organisation's own code of conduct (in 26, or 17% of administrative units with an ethics committee). Of these, 14 or 9% of administrative units with an ethics committee reported that their measures focused on disseminating information regarding potential conflicts of interest public officials may face and how they can be effectively managed. More recently, a 2010 Public Ethics Commission survey indicated that high officials effectively demonstrated leadership and compliance in approximately 97% of all federal public organisations (efforts in the remaining 3% were considered unsatisfactory). As mentioned, this survey was completed by public organisations themselves and responses have not been independently verified by the Public Ethics Commission, the Office of the Comptroller General of the Union or any other body. The different methodologies of the surveys also make it difficult to assess the scope of improvements.

Professional training, both at induction and ongoing, is one of the most commonly used and advertised instruments in OECD member countries for raising awareness and developing skills to instil standards of conduct in workplace functions. A 2010 Public Ethics Commission survey indicated that standards of conduct were integrated into training programmes and activities targeted at public officials in approximately 72% of all federal public organisations. In some cases satisfactory completion of these training programmes and activities was linked to an official's career progression. The extent of this practice was not measured. Within the Office of the Comptroller General of the Union, for example, successful completion of training, including a ten-hour module on ethics and public service by the National School of Finance Administration, is a pre-requisite for progression within the Finance and Control Career. The ethics and public service module is sub-divided into units covering: *i)* the normative principles underlying high standards of conduct; *ii)* obligations and duties of public officials and acts of administrative misconduct; *iii)* conflicts of interest and recommendations for preventing them; *iv)* obligations and duties of the ethics committees within individual public organisations; and *v)* the role of the Public Ethics Commission in providing guidance to the ethics committees within individual public organisations.

More recently, the Public Ethics Commission and the Office of the Comptroller General of the Union have begun co-ordinating plans to strengthen training in standards of conduct. A key element of this collaboration is the development of an online Management Training and Development Course (see Box 4.6). The 40-hour course is organised in 5 modules and its contents are based on the recommendations and guidance of the Public Ethics Commission. In 2010, approximately 500, or about one-fifth of all active Office of the Comptroller General of the Union officials participated in the pilot of this course. Public officials participating in the course are evaluated on the basis of an online exam, corresponding to 80% of their final grade with the remaining 20% based on participation in other course activities. To receive a certificate, public officials must attain a grade of at least 70%. The Public Ethics Commission and the Office of the Comptroller General of the Union propose that the course certificate form a criterion for career progression. It is not, however, mandatory for federal public organisations to accept any course taken by its public officials as a requisite for promotion. Individual public organisations have the right to decide what courses serve as a pre-requisite for matters of career progression.

Box 4.6. **Syllabus of Brazil's Public Ethics Commission/Office of the Comptroller General of the Union management training and development course**

In 2010, the Public Ethics Commission and the Office of the Comptroller General of the Union developed a management training and development course to support training of public officials on standards of conduct. The 40-hour course is organised in 5 modules, and its contents are based on Public Ethics Commission resolutions and other guidance materials. The Public Ethics Commission and the Office of the Comptroller General of the Union propose that satisfactory completion of the course form a criterion for career progression.

- Module I. Principles of ethics: key concept of ethics as well as the prevailing values and standards, their inter-relation and functions.
- Module II. Principles of policy and public service: key concepts of public life and fundamental values of the federal public administration.
- Module III. Ethics management in the federal public administration I: norms applicable to the federal public administration and governmental actors with responsibility for fostering public ethics.
- Module IV. Ethics management in the federal public administration II: exploring the Code of Professional Ethics for the Federal Public Administration.
- Module V. Addressing ethical dilemmas: identifying ethical dilemmas, ethical guidance and filing complaints, attributes and routines to reinforce ethics in the federal public administration.

Source: Public Ethics Commission and Office of the Comptroller General of the Union.

In Brazil, socialisation and training activities have traditionally been rule – rather than principle-based. Rule-based socialisation and training aims to transfer knowledge to public officials about their obligations and sanctions for non-compliance as a means to influence officials' attitudes and, ultimately, their conduct. This is in juxtaposition to principle-based socialisation and training activities, which aim to engage officials in considering what constitutes high standards of conduct (*e.g.* Finland and Norway). In between rule- and principle-based approaches, a growing number of OECD member

countries are adopting dilemma-type training (*e.g.* Australia, Canada and the Netherlands). Dilemmas are situations where standards of conduct are not clear cut and give rise to various justifiable responses. The aim of dilemma training is to help public officials recognise situations susceptible to breaches in standards of conduct – and to provide them with techniques and advice on how to deal with these situations. There are some signs of change to introduce more principle-based training in federal public organisations in Brazil. For example, the Secretariat of Federal Revenue reports using more dilemma-type training with the use of case studies. However, case studies are used more to emphasise that misconduct is detectable and that particular penalties will be enforced. Little training on standards of conduct is targeted to the specific risks associated with officials' tasks and level of management.

In order to promote high standards of conduct among federal public officials, Brazil's federal government could consider designing training activities or modules on standards of conduct to more closely correspond with the risks associated with officials' tasks and level of management. This would help to ascertain what public officials consider an appropriate response to situations susceptible to breaches in standards of conduct. At present, training activities for public officials on standards of conduct give little, if any, attention to dilemmas. Where dilemmas are used, they appear to be general to the organisation rather than specific to the function and rank of the public official participating in the training activities.

The Public Ethics Commission and ethics committees provide advice to public officials on standards of conduct as necessary in the course of their duties

Integrity counselling provides public officials with advice they require for resolving questions and dilemmas related to standards of conduct. High public officials may consult the Public Ethics Commission prior to executing any specific asset management operation or transaction, or regarding any questions in respect to ethical conduct and guidelines. In addition, the commission provides a list of frequently asked questions and responses on its website. The Public Ethics Commissions provides written responses to queries by high public officials. Between 2007 and 2009, the commission received approximately 180 queries per year from high public officials. Advice provided by the commission is binding and may be used as evidence in ethics and administrative investigations should the situation arise. Other public officials are urged to consult the ethics committee within their respective public organisations in the event any questions occur on standards or the code of conduct. It is also common for the questions to be published on the Intranet of the public organisation for the benefit of all public officials.

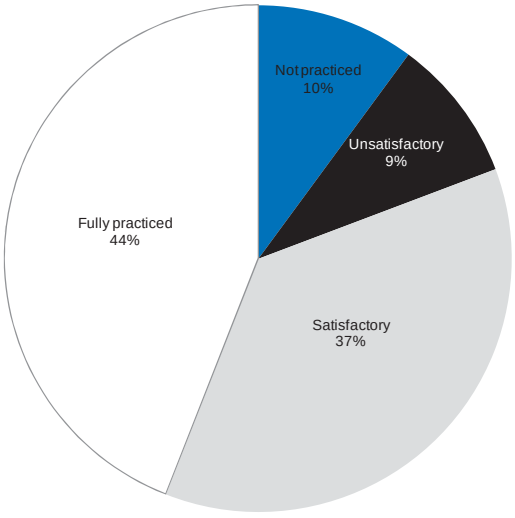
In contrast to high officials, communication channels between public officials by ethics committees appear less institutionalised. The 2008 Office of the Comptroller General of the Union survey identified that, of the 151 administrative units with an ethics committee, 93 (62%) maintained communication channels for public officials to seek integrity counselling and advice. Of the organisational units with an ethics committee, the main channels were through email (36%) and telephone (26%). Data on face-to-face counselling and advice was not measured. Counselling and advice from the ethics committees of individual public organisations were not, however, binding. The 2010 Public Ethics Commission Survey found that approximately 80% of all federal public organisations considered that they have fully implemented or established satisfactory channels for officials to receive guidance on the application of standards of conduct in specific situations. Of the remainder, 9% considered that the channels were unsatisfactory and could be improved and 10% had not established any such channels (see Figure 4.7).

As mentioned, this survey was completed by public organisations themselves and responses have not been independently verified by the Public Ethics Commission, the Office of the Comptroller General of the Union or any other body. The different methodologies of the surveys also make it difficult to assess the scope of improvements.

Public sector trade unions and human resource management units within federal public organisations in Brazil do not typically provide integrity counselling. Timely advice from trade unions is considered a particularly useful source for public officials facing dilemmas in OECD member countries. Despite the relatively high level of unionisation within Brazil's federal public administration, about 55% (including retirees), provides a high potential for both access and confidence. Human resource management units in Brazil focus more on issues of establishment size, the wage bill and, increasingly, competency and performance management (OECD, 2010a).

Figure 4.7. **Have public organisations established channels for officials to receive guidance on the application of standards of conduct in specific situations?**

Results of the Public Ethics Commission Annual Ethics Management Survey, 2010



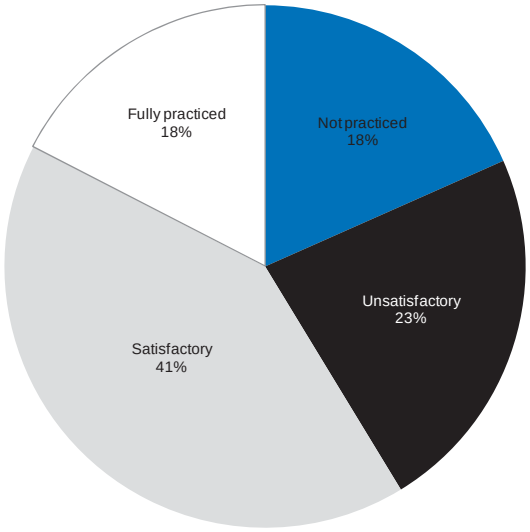
Source: Public Ethics Commission.

Measures are being created to monitor the application of standards of conduct and identify possible misconduct

Monitoring the extent to which standards of conduct are applied by public officials on a day-to-day basis can take different forms. Public managers may engage in active monitoring by taking initiatives to purposely search for integrity dilemmas and risks as well as integrity violations, with the aim to prevent, or to take corrective or punitive actions where necessary. Active monitoring may be integrated into training activities, linked to disciplinary actions or through risk management and control activities. Passive monitoring refers to the establishment of channels for public officials to self-report potential, perceived and real conflict of interest and other forms of misconduct. The existence of measures and systems for public officials to disclose their private interests and to report conflict of interest and other forms of misconduct are two common examples of passive monitoring.

Figure 4.8. **Is observance with standards of conduct monitored by public organisations?**

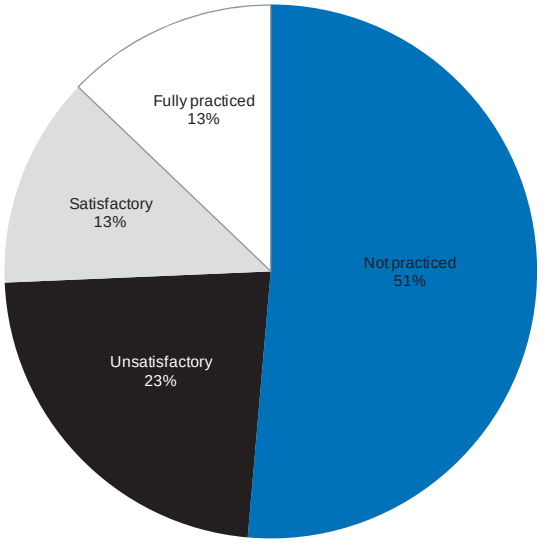
Results of the Public Ethics Commission Annual Ethics Management Survey, 2010



Source: Public Ethics Commission.

Figure 4.9. **Is the degree of knowledge of standards of conduct by public officials measured by public organisations?**

Results of the Public Ethics Commission Annual Ethics Management Survey, 2010



Source: Public Ethics Commission.

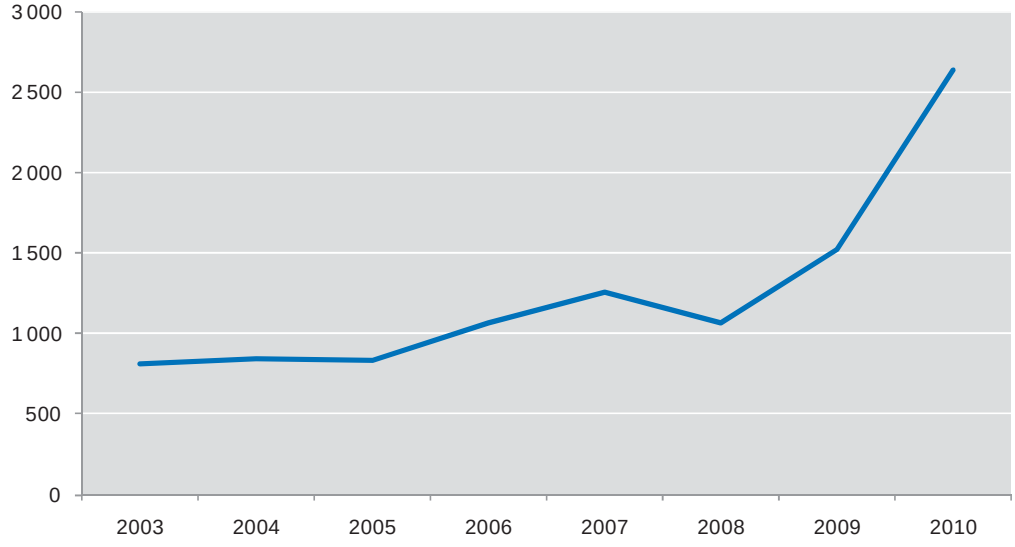
The effectiveness of socialisation, training and counselling activities may be monitored and verified using a number of methods, including participant survey/feedback following the completion of ethics training. In Brazil, some ethics training and modules are graded to assess the official's knowledge of expected standards of conduct and

penalties as well as the institutions responsible for providing guidance and administrative discipline. Surveys and feedback on training activities enables participants to offer their assessment of the instructors and course, its relevance to their work and concerns. Information on training available within federal public organisations currently relates more to the number of participants. The results of the 2010 Public Ethics Commission survey provides some evidence on the observation, knowledge and sanctioning of breeches of ethical standards within the federal public administration. The survey indicates that 58% of all public organisations consider their monitoring of the observance of standards of conduct as satisfactory, 23% consider it unsatisfactory and 19% do not monitor at all. In parallel, 25% of all federal public organisations report measuring the degree of knowledge of standards of conduct of their officials, 23% consider it unsatisfactory and a further 52% do not measure at all. Questions raised through integrity counselling are not, however, systematically monitored over time to influence what issues are raised and how they are addressed in training activities.

The Inspectorate General of Administrative Discipline collects and analyses data on administrative investigations and disciplinary procedures. Since 2003, there have been approximately 6 800 public officials dismissed through disciplinary procedures. It also monitors the number of administrative processes resulting in dismissal from the public administration, dismissals of high public officials and dismissals as a result of corruption. The Inspectorate General of Administrative Discipline notes that efforts to standardise investigative and disciplinary procedures and increase training of officials involved in administrative disciplinary procedures since 2006 can be measured. Between 2003 and 2010 the number of public officials trained in administrative disciplinary procedures increased by 325%, from approximately 800 to 2 600 per year in 2010. The average number of administrative dismissals between 2006 and 2009 increased approximately 46% compared to the average between 2003 and 2005. Over the same period, the average number of dismissals of high public officials increased approximately 81% and the number of dismissals related to corruption increased 100% (see Figure 4.10a). Where as in 2005, 19% of those dismissed through disciplinary actions had this decision annulled by the courts, only approximately 11% did so in 2009. This data is also published monthly on the website of the Office of the Comptroller General of the Union.

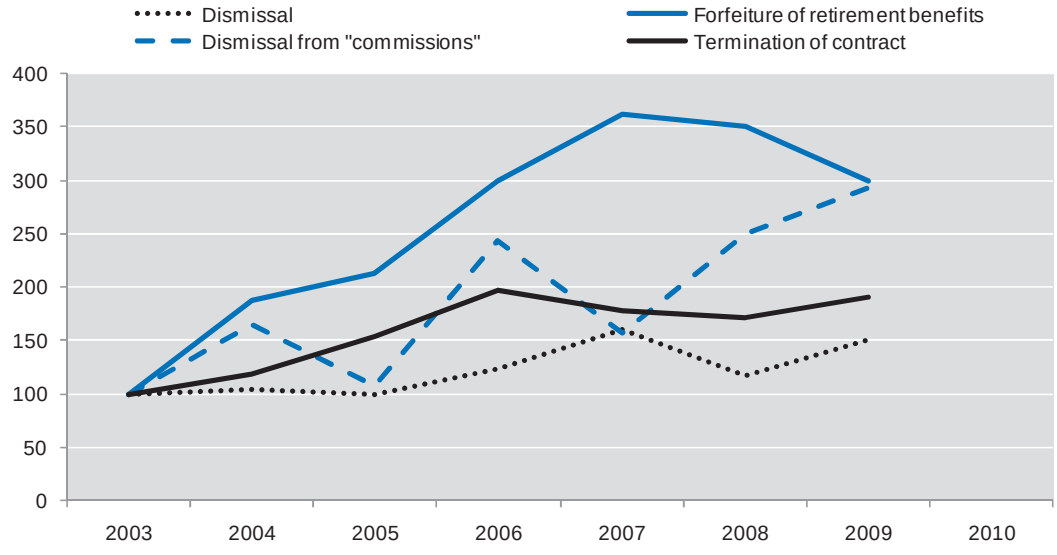
Figure 4.10. **Administrative disciplinary procedures in Brazil's federal public administration**

A. Number of public officials involved in disciplinary procedures



B. Dismissals, loss of commission, terminations and loss of retirement benefits

(2002 = 100%)



Notes: Data for 2010 are not available.

Source: Inspectorate General of Administrative Discipline, Office of the Comptroller General of the Union.

Private interest disclosures are required from all federal public officials, although the information is only used to prevent conflicts of interest for high officials

Establishing and maintaining an effective system for public officials to disclose their private interests supports the monitoring of illicit enrichment and also prevents potential conflicts of interest. In Brazil, Federal Law no. 8 429/1992 regarding Government

(Administrative) Impropriety establishes mandatory disclosures of assets and income by all federal public officials. Disclosures must be updated annually and before officials change position or function or leave office, submitted to the human resource unit of the public organisation where officials work or are employed. Failure to file, deliberately delaying the filing of or intentionally submitting an inaccurate private interest disclosure constitutes an administrative disciplinary breach with the possibility of dismissal and ineligibility for any position within the public administration for a period of up to five years. The obligation for high officials to make such disclosures was reinforced by Federal Law no. 8 730/1993, establishing the mandatory disclosure of income and assets for high public officials within the federal executive, legislature and judiciary. Under this law, high officials are obliged to file signed disclosures with the public organisation in which they perform their activities and forward a copy to the Federal Court of Accounts. High public officials must submit this information using a Confidential Information Disclosure within 10 days of taking office or within 30 days of any significant changes to the respective financial information. Public Ethics Commission resolutions provide further guidance and templates for high public officials to file private disclosures (see Resolutions no. 1/2000, no. 5/2001 and no. 9/2005). Intentional submission of an inaccurate disclosure by a high official constitutes a criminal offence.

The information contained in the disclosures by high public officials in Brazil is similar to that in many OECD member countries (see Table 4.6a). It includes income by source and amount, assets, liabilities, paid and unpaid outside positions and previous employment. In addition, private interest disclosures are used to help high public officials identify and manage possible conflicts between an official's private interest and that held in public office. For example, it requests further information about specific assets and whether, in the opinion of the senior public official, they raise or have the potential to cause a conflict with the public interest. It also addresses professional activities performed in the past 12 months, professional activities performed concurrently while in public office and other situations that could potentially give rise to a conflict of interest. Where an actual or potential conflict exists, the forms require that officials describe the manner in which the conflict will be managed. In Brazil, private interest disclosures by high public officials are not made publicly available, either proactively or upon request, as in some OECD member countries (see Table 4.6b). Putting disclosed information in the public domain is useful in order to enlist the support of citizens in monitoring disclosures and potentially increase the credibility of the system. Public access cannot, however, substitute for effective monitoring and verification by the responsible authority. Moreover, in the absence of thorough monitoring and verification of the content of disclosures, public access may not have a beneficial impact but rather expose its deficiencies and diminish public confidence in the credibility of the system.

Table 4.6. **Private interest disclosures for federal ministers or members of Cabinet in Brazil and select other countries, 2010**

A. Information included within the disclosure

Country	Income by:		Assets	Liabilities	Gifts	Outside positions		Previous employment
	Source	Amount				Paid	Unpaid	
Australia	●	●	●	●	●	●	●	o
Brazil	●	●	●	●	Prohibited	●	●	●
Canada	●	●	●	●	●	Prohibited	●	●
Chile	●	●	●	●	Prohibited	●	●	●
France	o	o	●	●	O	o	o	o
Germany	o	o	o	o	●	Prohibited	●	o
Italy	o	o	●	o	O	●	●	o
Japan	●	●	o	o	O	Prohibited	o	o
Korea	●	●	●[3]	●[3]	●[4]	●	●	●
Mexico	●	●	●	●	●	●	o	●
Portugal	●	●	●	●	●	o	o	●
Spain	●	●	●	●	●	●	●	●
United Kingdom	●	o	o	●	●	●	●	o
United States	●	●[5]	●[6]	●[6]	●[7]	●	●	●

Notes: ● = required, o = not required

1. Brazil: for purposes of comparability, this refers to level 6 supervisory and management officials.

3. Korea: assets/liabilities above KRW 10 million.

4. Korea: gifts above KRW 100 000.

5. United States: income amounts above USD 200.

6.United States: assets above USD 1 000 and liabilities above USD 10 000.

7. United States: gifts above USD 335.

B. Public availability of disclosures

Proactively made available	Available on request	Not available
Canada,[1] Chile, Germany,[2] Korea,[4] Mexico, Spain, United Kingdom	Japan,[3] Portugal, United States	Australia, **Brazil**, France, Italy

Notes:

1. Canada: assets and liabilities disclosed and publicly available online or print. Income source and amount and previous employment are not publicly available.

2. Germany: information on gifts disclosed and publicly available online or print. Outside positions not publicly available.

3. Japan: income source and amount disclosed and publicly available online or print.

4. Korea: income source and amount, assets and liabilities publicly available online or print. Gifts, outside positions and previous employment not publicly available.

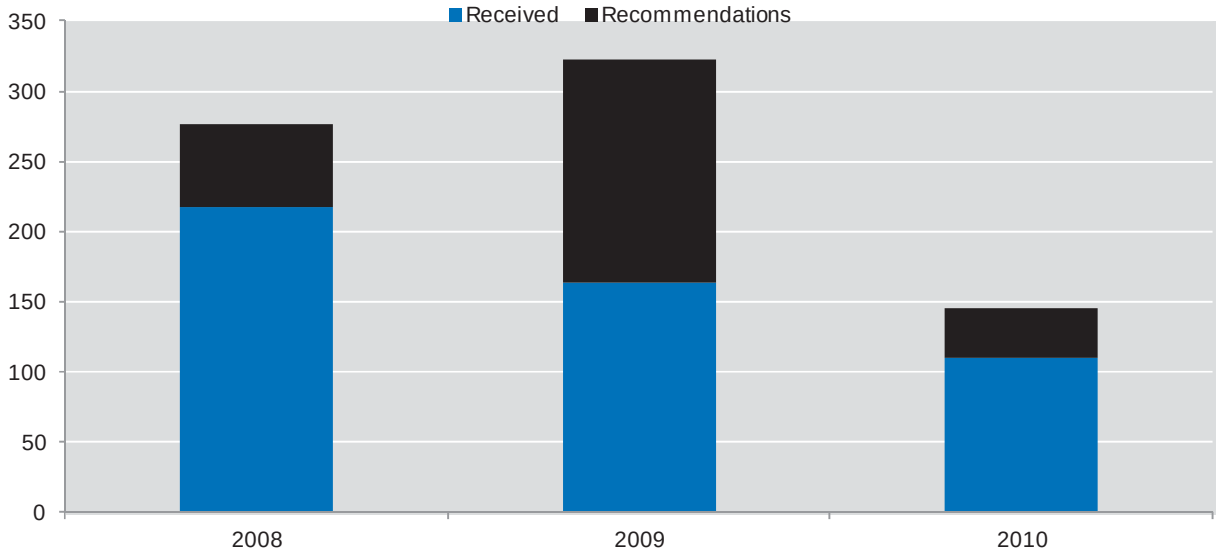
Source: OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, doi: 10.1787/22214399.

The implementation of private interest disclosures in Brazil did not, however, really come into effect until 1999 for high public officials and 2005 for other public officials. For high public officials, the implementation of the private interest disclosures was driven by the promulgation of the Code of Conduct for High Officials in the Federal Public Administration, the establishment of the Public Ethics Commission and the creation of a Confidential Information Disclosures template (see Annex 4.A4). During the first 3 months after the adoption of this Confidential Information Disclosures template, the level of default by high officials of was greater than 40%. This high level of fault stemmed from a lack of understanding of the obligation to submit a disclosure to the Public Ethics Commission. Following formal warnings by the Public Ethics Commission,

the level of default dropped to around 1% (CEP, 2001). Upon receipt and analysis of Confidential Information Disclosures, the Public Ethics Commission issues binding recommendations regarding actions to be taken by high public officials regarding possible conflicts of interest identified.

For all other public officials, the submission of private interest disclosures only really commenced following the promulgation of Federal Decree no. 5 483/2005 and Inter-ministerial Decree no. 298/2007 allowing public officials to authorise the federal authorities to access data from their tax returns in lieu of a formal disclosure. (Annexes 4.A5 and 4.A6 present the templates for paper disclosures and authorisation of access to tax records, respectively). The adoption of tax data for private interest disclosures reduces the burden on public officials insofar that they do not have to produce the same data in two different formats – one for the tax administration, the other for the officials' human resources unit. Approximately 90% of public officials use the option of giving their income tax statements.[7]

Figure 4.11. **Confidential information disclosures submissions by Brazil's high public officials**



Source: Public Ethics Commission.

In Brazil, verification of the information contained with the private interest disclosures for other public officials and public officials is the responsibility of the Federal Court of Accounts and Office of the Comptroller General of the Union. The Federal Court of Accounts maintains a register of disclosures to facilitate efforts: *i)* to monitor public officials' private interests; *ii)* to exercise control, with the support of Office of the Comptroller General of the Union, over the legality and legitimacy of the disclosures; *iii)* to detect irregularities or abuse of public office; *iv)* to periodically report in the *Official Gazette of the Union* excerpts of data contained in the disclosures; *v)* to report to the National Congress, or its commissions or committees, as requested; and *vi)* to respond to submissions by the public concerning suspected misconduct by public officials. Within the Office of the Comptroller General of the Union, the Secretariat for Corruption Prevention and Strategic Information verifies the disclosures based on a risk

assessment using a sampling adjusted for both public organisations and public officials. Organisations are selected based on a criterion of materiality (*i.e.* levels of expenditure and revenue collection) and red flags raised in audit activities. Individuals are selected based on their decision-making powers (*i.e.* levels 3-6 supervisory and management officials) or function (*i.e.* officials in charge of procuring goods and services, overseeing the private sector or granting licenses).

To access the disclosures, the Secretariat for Corruption Prevention and Strategic Information visits the human resources unit of the involved public organisation to access the original disclosure forms. The Secretariat's officials do not remove the disclosures forms but, rather scan and re-key the information from the scanned files as required. Once digitalised, data is crossed with other government databases to identify potential orange and red flags to be investigated. The current data-crossing has evolved since 2006, when the Office of the Comptroller General of the Union began examining of private interest disclosures. The Office of the Comptroller General of the Union considers that it has developed a more systematised search method only in the last year. In 2010, various government systems and databases were accessed including the Federal Government Financial Administration System (*Sistema de Administração Financeira do Governo Federal*) for contract payments, the Integrated General Service Administration System (*Sistema Integrado de Administração de Serviços Gerais*) for contracts awarded data and property registry databases maintained by the judiciary, among others.

Public officials are obliged to report suspected misconduct – though a question exists as to whether adequate protection exists for those that come forward

Facilitating the reporting of wrongdoing by federal public officials can help to detect and prevent administrative, civil and criminal misconduct at all levels and in all functions of the public administration. Public officials are uniquely placed to observe or suspect misconduct because of their knowledge of operational procedures and close interaction with other public officials. This applies to a broad range of wrongdoing including: misconduct for material gain, such as fraud and receipt of illegal payment; conflict of interest, either perceived, potential or actual; maladministration and the waste of public resources; perverting transparency and accountability. An effective protected disclosure policy entails two components: a system for reporting misconduct and a system for protecting public officials against retaliation who make use, in good faith, of these channels (OECD, 2000). Almost all OECD member countries define procedures for reporting corruption and violation of laws. Moreover, two-thirds of OECD member countries have legislated protection for whistleblowers (OECD, 2009). Failure to ensure the confidentiality of reports and demonstrate management commitment to protect officials against retaliation, both from management and colleagues, may deter public officials from reporting misconduct.

In Brazil, public officials are obliged to report misconduct of which they have knowledge under the Code of Conduct for the Federal Public Administration, the Legal Framework for the Federal Public Administration and the Code of Professional Ethics for Public Officials of the Federal Administration. There is no dedicated legislation on protected disclosures in Brazil, such as that which exists in Australia, Canada, Korea, South Africa, the United Kingdom and the United States. In Brazil, federal public officials can face administrative sanctions for not reporting misconduct, resulting in dismissal for dereliction of duty and acting in a negligent manner. Moreover, under Brazil's Criminal Code (Decree-Law no. 3 688/1941) it is an offence if an official fails to report crimes occurring in the public administration of which they have knowledge in the

course of their public functions. It establishes a sanction of 15 days to 1 month, or a fine, for public officials who, by indulgence or leniency, fail to hold subordinates accountable who commit a violation in the performance of their functions or – if they do not have the authority to do so – who fail to report such a case to the competent authority.

Continued job stability represents a key protection designed to ensure public officials are able to report misconduct of which they have knowledge without limit or restriction.[12] Public officials may only be terminated by an administrative disciplinary proceeding following the opportunity for a full defence or a court decision – and, in both cases, public officials have the right to appeal the decision to a higher court. This guarantee also applies to public officials during their mandated three-year probationary period and officials in supervisory and management positions. The latter, however, can be dismissed at any time as their relationship with the federal public administration is based on trust with the nominating authority. Protection is also provided against grievous threats for public officials who voluntarily co-operate with police investigations and criminal proceedings (see Federal Law no. 9 807/1999 regarding the Federal Victim and Witness Protection Programme).[13] Typically, however, witness protection-type programmes are only for serious cases of misconduct.

While reporting misconduct is considered confidential, public officials filing unfounded disclosures against another official or in respect to any event determined not to have occurred, are subject to administrative, criminal and civil sanctions. The Criminal Code establishes penalties ranging from six months to one year imprisonment or a fine for falsely reporting a criminal offense, infractions leading to official action arising from the notification of a criminal offense or infractions the reporting person knows was not verified. The Civil Code establishes remedies, including compensation for damages, defamation or libel. Bill no. 41/2010 regarding freedom of information, currently under discussion within the National Congress, proposes to amend Federal Law no. 8 112/1990 on the federal public administration, to prohibit the application of administrative, criminal and civil liability for public officials who report practice of misconduct or crimes.

In 2006, the federal government tabled a bill to the National Congress for the creation of an Incentive Programme for Public Interest Disclosures (no. 228/2006). The bill originally provided cash compensation of up to 10% of the total assets, rights and securities – or up to 10% of the total value of the proceeds of the criminal offense – effectively recovered by the state Treasury as a result of a disclosure to any individual coming forward to report misconduct. The proposal for cash compensation created a lot of debate within the Federal Senate. Critics argued that the cash compensation would stimulate unfounded disclosures. The latest version of the bill provides compensation only for disclosures offered by citizens. The compensation does not apply to public officials since they are already obligated by law to disclose information of wrongdoing. The last version of the text was approved by the Committee on Constitution and Justice (*Comissão de Constituição e Justiça*) of the Federal Senate in June 2009. The text now needs to be considered in a plenary, approved by the Federal Senate and, then considered and approved by the Chamber of Deputies. According to the Federal Senate, this bill has been waiting to be included in the order of the day since June 2009.

Box 4.7. **Public interest disclosures vs. whistleblowing vs. leaking**

The term "protected disclosure" is often favoured above "whistleblowing" for a number of reasons, including:

- to indicate the overall aim, namely to safeguard the public interest as a *bona fide* action, although a few countries also introduced financial rewards to facilitate reporting;
- to emphasise information that reflects a lack of public integrity generally, or impacting on society at large, as opposed to private complaints (*e.g.* related to personnel or workplace grievances);
- to focus on more objective and neutral terminology rather than implying an ethical choice by a public official, or reflecting disloyalty and untrustworthiness within the public organisation; and
- to place the information disclosed at the centre of any procedures, or investigations, rather than the individual making the disclosure, and their possible motive.

Leaking is done outside of the established channels and without any form of protection against reprisal. It is particularly damaging to trust within government and public trust in government, particularly in cases where suspicions or evidence is not substantiated. The most effective way to prevent leaks by public officials is to provide accessible, effective and visible channels by which public officials of all grades can raise genuine concerns about misconduct within the public sector.

There are multiple pathways for public officials to report misconduct internally – differentiated by the type of official and the type of report. In cases of a breach of ethics involving a high public official, reports may be submitted to the Public Ethics Commission. The commission's website[14] provides contact information – address, telephone and fax numbers, email addresses – through which reports can be channelled. Reports of breaches of ethics involving any public official are to be referred to the ethics committee of the public organisation where the official works. Reports of administrative disciplinary infractions should be forwarded to the competent superior or directly to the Inspectorate General of Administrative Discipline. Public officials may also report misconduct as a citizen to the Federal Court of Accounts, Office of the Federal Public Prosecutor and the Department of Federal Police (see Federal Law no. 8 443/1992 regarding the Federal Court of Accounts, Complementary Law no. 75/1973 regarding the Office of the Public Prosecutor and the Criminal Code, respectively). In each case, reports may be filed over the Internet, by telephone or in person. As highlighted in Chapters 1 and 2, Brazil's Office of the Federal Public Prosecutor functions much like an independent parliamentary ombudsman. Compared to a typical ombudsman, the Office of the Federal Public Prosecutor can intervene proactively in court to protect individual and collective rights and interests. The Office of the Federal Public Prosecutor operates the Electronic Citizen Assistance Centre (*Ciminal e Controle Externo da Atividade Policial*)[15] to support citizens coming forward with reports of misconduct by public officials.

A key challenge facing governments is the ability to create a culture whereby public officials feel confident in reporting misconduct that they may have witnessed or become aware of in the course of their duties. Many public officials fear retaliation for reporting

suspected misconduct. In this regard, passing new legislation in Brazil, including financial incentives, for public officials who come forward may not necessarily have any impact if they are not accompanied by efforts to create an open culture and confidence in available protection. Brown (2009) outlines a framework to consider the dimensions of protected disclosure systems at the level of public organisations (see Table 4.7). The framework serves to set out: *i)* the bases on which quantitative and qualitative data about the current performance of public organisations systems can be compared and analysed; and *ii)* a structure for the development of best-practice procedures in a wide range of public organisations.

Table 4.7. **Framework for assessing the functioning of a protected disclosure system**

Dimensions	Description
Organisational commitment	– To communicate the principles of protected disclosures and statements of the organisation's support for the reporting of wrongdoing through appropriate channels. – To establish and maintain a credible investigation process of information received through protected disclosures and that any confirmed wrongdoing will be remedied. – To protect and respect the role of internal witnesses. – To positively engage on protected disclosures issues with external public integrity organisations and staff associations.
Clear internal and external reporting pathways	– To set out how, to whom and about whom protected disclosures may be made, including guidance on appropriate pathways for different reports. – With a clear and understood relationship between internal and external reporting. – With clear advice on who may invoke the protected disclosures mechanism (*i.e.* public servants, contractors, volunteers, etc.) – With clear advice on the types of concerns about which it is appropriate to use the protected disclosures mechanisms, including levels of proof required.
Management obligations to internal witnesses	– To provide realistic assurance of the confidentiality of protected disclosures. – To assess the risk of reprisal against internal witnesses. – Procedures and resources for responding to reprisal risks against internal witnesses. – Commitment that officials that make a protected disclosure will not suffer any disciplinary or similar actions as a result. – Mechanisms to ensure positive action by the entity to protect internal witnesses, including compensation when protective actions become unsuccessful or impossible. – Clear procedures for the protection of the rights of officials against whom disclosures have been made. – Appropriate sanctions against false or vexatious disclosures.
Organisational support for internal witnesses	– Systems/services for providing active management and support of internal witnesses. – Procedures and resources for the investigation of reprisal action against internal witnesses, including action against any officials found responsible. – Provision of information, advice and feedback to internal witnesses on actions being taken in response to disclosures. – Exit strategies for finalising protected disclosure cases. – Regular evaluation of the effectiveness of protected disclosure systems.
Institutional arrangement	– Clear understanding of the protected disclosure-related roles and responsibilities of key internal and external actors. – Effective sharing of responsibility for the support and management of protected disclosures between management and external organisations. – Effective separation of investigation and support functions. – Embedding of policies and procedures in existing management systems and governance arrangements, including mechanisms for reporting and tracking all disclosures.
Skills and resources	– Financial resources dedicated to the protected disclosure systems. – Investigational competencies and training. – Support counselling and management competencies and training.
Promulgation of procedures	– Multiple strategies for ensuring officials' awareness of the protected disclosure systems. – Clear information about protection available. – Easy-to-comprehend procedures, including the relationship with other procedures. – High level of awareness, comprehension and confidence in the procedures by officials.

Source: Adapted from Brown (2009), *Whistleblowing in the Australian Public Sector: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, Australian National University Press, Canberra.

Progress has been made to verify the functioning of institutions and systems for promoting high standards of conduct

Public perception surveys provide limited benefit for governments to understand the effectiveness of integrity management (OECD, 2009). Data is essential for decision makers and public managers to gain insight through examining and measuring the likely benefits, costs and effects of decisions. A key instrument to evaluate efforts to embed high standards of conduct in the federal public administration is the ethics management surveys commissioned by the Public Ethics Commission. Since 2001, 12 surveys have been commissioned by the commission, conducted bi-annually for the first three years and annually thereafter. This chapter draws upon the results of the "2010 Public Ethics Commission Ethics Management Survey". In 2009, the commission conducted its first public opinion survey of ethics within the federal public administration. The surveys and their results are not published on the Internet and only limited reference to their results can be found in the Public Ethics Commission's annual reports.

The Office of the Comptroller General of the Union also conducts surveys related to institutions and systems for embedding high standards of conduct. This chapter draws upon the results of a 2008 Office of the Comptroller General of the Union survey on the existence and functioning of public organisation's ethics committees. Between July and September 2009, the Office of the Comptroller General of the Union conducted a survey of officials in positions of trust and gratification requesting information on family relationships with interns, outsourced employees and consultants contracted through international organisations engaged in service delivery for federal public organisations. The survey was conducted between July and September 2009. A total of 20 566 responses were received (approximately 99% of the total possible). After analysis, 180 cases of possible nepotism were found in accordance with what is established by Federal Decree no. 7 203/2010, which regulates the matter. Information on these cases and whether sanctions had been imposed was not available.

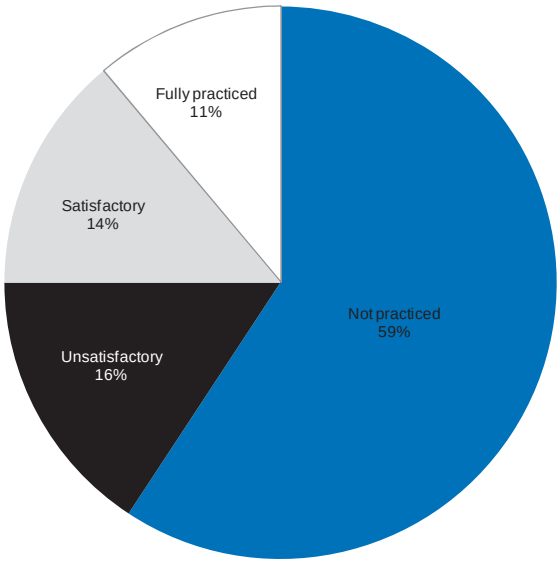
Since 2008 the Office of the Comptroller General of the Union has, in addition, sought to collect good practices from federal public organisations regarding efforts to embed high standards of conduct. Such examples can support management improvements in federal public organisations by highlighting where good practices are being employed in the public administration. To date, however, much of the activities of the Office of the Comptroller General of the Union has focused on the existence of measures and systems rather than their functioning. Moreover, there has been no effort to verify the good practices self-proclaimed by public organisations. Departing from the current model, the Office of the Comptroller General of the Union could play a key role in evaluating what it considers as good practice. In doing so, attention could focus on the experience of multiple public organisations to develop issues for consideration or checklists for public officials as they undertake actions to promote high standards of conduct. Good practice guides may be produced in conjunction with monitoring and audit activities of the Secretariat of Federal Internal Control within the Office of the Comptroller General of the Union. Good practices need not only originate from federal public organisations but also state and municipal public organisations, in Brazil or overseas.

Monitoring of practices to promote high standards of conduct is less common at the level of individual public organisations. The 2010 Public Ethics Commission Survey found that approximately one-quarter of all federal public organisations considered that they had established satisfactory monitoring these practices. A further 16% are trying to monitor these practices and approximately 60% have not begun to try (see Figure 4.12).

As mentioned, this survey was completed by public organisations themselves and responses have not been independently verified by the Public Ethics Commission, the Office of the Comptroller General of the Union or any other body.

Figure 4.12. **Do public organisations use indicators to monitor the ethics management practices?**

Results of the Public Ethics Commission Annual Ethics Management Survey, 2010



Source: Public Ethics Commission.

A number of challenges exist in relation to the survey work conducted by the Public Ethics Commission and the Office of the Comptroller General of the Union. First, there appears to be little continuity in the topics covered and, as such, surveys do not show the changes in trends over time. This is particularly an issue facing the surveys of the Public Ethics Commission. The ability of the federal government to measure the progress made in embedding high standards of conduct could benefit substantially by standardising the annual ethics management surveys conducted by the Public Ethics Commission to allow monitoring of developments regarding standards of conduct over time. It may not be necessary to conduct the same survey every year. Alternative surveys may be conducted on a rolling basis. In addition, attention could focus on leveraging new technologies by conducting the surveys through officials email accounts, for example. This would reduce the cost of conducting the survey and increase the speed with which results can be processed.

An additional challenge is the fragmentation of assessment activities and their results. Various organisational units collect information regarding the functioning of integrity management both at a whole-of-government and organisation-specific level. For example, the Public Ethics Commission collects information as it relates to Code of Conduct for the High Officials in the Federal Public Administration and ethics committees. The Secretariat for Corruption Prevention and Strategic Information collects information more generally relating to the role of ethics management in preventing misconduct. The Inspectorate General of Administrative Discipline collects information on administrative investigations and sanctions. This information is, however, not typically

analysed and assessed together but considered separately and distinct from one another. In this regard, the federal government of Brazil would benefit from developing a joint evaluation framework, while allowing each integrity actor to maintain information in their respective areas. Such a framework could include both quantitative and qualitative data. Partnership with education institutions may aid the design of methodologies to evaluate standards of conduct.

Brazil has a mixed record of publishing the results of verification and assessment activities, as has been illustrated within this chapter. Data collected by the Inspectorate General of Administrative Discipline is published on the Internet page of the Office of the Comptroller General of the Union. Results of other surveys and, in particular, those by the Public Ethics Commission, while circulated to officials working in public organisations' ethics committees, are typically not published. Findings need not only be communicated internally within the federal public administration but also externally to the National Congress, media, citizens and the private sector. In particular, a growing demand from citizens requires the public administration to report on how it has been managing public resources to create a favourable climate for investment. Similar to other steps in an assessment process, the communication strategy can benefit from consultation with stakeholders to understand how information can be tailored to different audiences. Planning effective communications also requires consideration of the timing, style, tone, message source, medium and format of information products.

Conclusions and proposals for action

Brazil has sought to clarify and maintain the relevance of, and address emerging risks through, standards of conduct for federal public officials. These efforts have resulted in the creation of standards for conflict of interest, gifts, participation in external events, nepotism, etc. A bill regulating conflict of interest (including post-public employment), is currently under discussion by the National Congress. In order to strengthen the legal framework and embed high standards of conduct, federal government of Brazil could consider the following proposals for action:

- Broaden the scope of coverage of officials under the Code of Conduct for High Public Officials to include levels 4 and 5 supervisory and management officials, and their equivalents. A unique and defining feature of supervisory and management officials is that they may be seconded from another public organisation (mainly from the federal administration but also from a state or a municipal administration) or recruited externally from the private and not-for-profit sectors. Bill no. 7 528/2006 regarding conflict of interest already proposes to expand the definition of high public official to include level 5 supervisory and management officials and their equivalents. Broadening the scope of coverage of officials under the Code of Conduct for High Public Officials to include levels 4 and 5 supervisory and management officials and their equivalents would expand the coverage of the Code of Conduct for the High Officials in the Federal Public Administration from approximately 450 to 4 450 officials.
- Utilise risk management activities to identify emerging ethical risks facing public officials in decision-making processes to clarify and maintain the relevance of standards of conduct. At present the generic risk management methodology developed by the Office of the Comptroller General of the Union is framed as a means of strengthening internal controls and preventing corruption rather than ethical dilemmas and possible conflicts of interest. This could involve the

participation of members of the ethics committees of individual public organisations in the process of risk identification, assessment and formulation of mitigating actions. This could be explored in the piloting of the risk management methodologies scheduled for 2011/2012.

Since 2006, the Office of the Comptroller General of the Union has begun to develop programmes to disseminate information on expected standards of conduct and to build capacity for applying them in day-to-day activities. Moreover, the Office of the Comptroller General of the Union has begun to identify good practices, analyse officials' private interest disclosures and audit the existing ethics actions in individual federal public organisations. In order to foster high standards of conduct among federal public officials, federal government of Brazil could consider the following proposals for action by the Public Ethics Commission and Inspectorate General of Administrative Discipline:

- Develop guidelines on how to effectively conduct a consultation in the preparation of a code as a reference for individual public organisations as they develop their own codes. Consultations can support the development of a code of conduct, as well as ensure that any code is understood and considered relevant to public officials.
- Where appropriate, apply the code of conduct to service providers, including by inserting relevant provisions of the code into contracts and ensuring that complaints procedures (*e.g.* ombudsman) are well communicated to citizens by service providers.
- Identify and publish information on good practices for guiding public officials in applying high standards of conduct. To date, the Secretariat of Corruption Prevention and Strategic Information within the Office of the Comptroller General of the Union has conducted ad hoc surveys of good practices in relation to standards of conduct in individual public organisations. Such surveys could be used to complement the annual surveys of ethics management in order to disseminate good practices. Good practices need not only originate from federal public organisations but also state and municipal public organisations as well as private organisations, in Brazil and overseas. This may include protocols for public managers to raise issues of standards of conduct in day-to-day work, model training packs for trainers and students, etc.
- Design training activities or modules on standards of conduct to more closely correspond with the risks associated with officials' tasks and level of management (*i.e.* dilemma-type training). This would help to ascertain what public officials consider an appropriate response to situations susceptible to breaches in standards of conduct. At present, training activities for public officials on standards of conduct give little, if any, attention to dilemmas. Where dilemmas are used, they appear to be general to the organisation rather than specific to the function and rank of the public official participating in the training activities.

Brazil does not have a clear framework for assessing the impact of its ethics management or administrative discipline systems (many OECD member countries face the same challenge). Within Brazil's federal public administration qualitative and quantitative data does exist and efforts have been made to standardise them during the last few years. In order to enhance efforts to verify standards of conduct, federal government of Brazil could consider the following proposals for action by the Public

Ethics Commission, the Inspectorate General of Administrative Discipline and the Ombudsman General of the Union:

- Move to standardise the annual ethics management surveys conducted by the Public Ethics Commission to allow monitoring of developments regarding standards of conduct over time. At present, annual ethics management surveys conducted by the Public Ethics Commission have lacked continuity and, as such, do not show trends over time. It may not be necessary to conduct the same survey every year. Alternative surveys may be conducted on a rolling basis. In addition, attention could focus on leveraging new technologies in conducting the surveys through officials email accounts, for example. This would reduce the cost of conducting the survey and increase the speed with which results can be processed.
- Develop a joint evaluation framework combining information on efforts to guide and monitor high standards of conduct (defined as ethics management in Brazil) and enforce standards of conduct (defined as administrative discipline in Brazil). Information on ethics management is already collected through annual surveys of ethics management, training on standards of conduct, ethics counselling and ethics investigations by the Public Ethics Commission and ethics committees of individual public organisations. Information on administrative discipline is already collected by the Inspectorate General of Administrative Discipline. Such a framework could include both quantitative and qualitative data. Partnerships with educational institutions may aid the design of methodologies to evaluate standards of conduct.
- Support public managers to apply the joint evaluation framework to assess standards of conduct within their own organisations as a basis for improvement, to facilitate benchmarking across federal public organisations in a meaningful way and to complement evaluation activities at a whole-of-government level.
- Communicate the results of annual assessments internally within federal public organisations, across the federal public administration, as well as to citizens. Communicating the results of assessment can positively shape opinion about the role and capability of efforts to embed high standards of conduct.

Notes

1. The United Nations Convention Against Corruption draws reference to: *i)* the promotion of integrity, honesty and responsibility among its public officials; *ii)* the application of codes of conduct to articulate the standard of conduct of public officials for the correct, honourable and proper performance of public functions; *iii)* the establishment of measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities; *iv)* measures and systems requiring public officials to make declarations of their private interests that can give rise to a conflict of interest with respect to their functions as public officials; and *v)* disciplinary or other measures against public officials who violate the codes or standards (Article 8). This is in addition to maintaining and strengthening systems for the recruitment, hiring, retention, promotion and retirement of public officials (Article 7).

   The Inter-American Convention Against Corruption notes, Article 3:

   "[To promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance] the states parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: …*i)* standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes. *ii)* mechanisms to enforce these standards of conduct; *iii)* instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; *iv)* systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public…*viii)* systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their constitutions and the basic principles of their domestic legal systems; *ix)* oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts".

2. The obligations and duties, as well as sanctions, outlined in the Code of Conduct for the Federal Public Administration (Federal Law no. 8 027/1990) and Federal Law no. 8 112/1990 regarding the public administration are largely identical. The latter builds the former into the framework for human resource management within the public service. See Federal Law no. 8 027/1990, Article 2, and Federal

Law no. 8 112/1990, Article 116. Two additional articles are included in Federal Law no. 8 112/1990, namely: *i)* the requirement "to inform the superior authority of the irregularities that have knowledge by virtue of office"; and *ii)* the requirement "to meet promptly…the requisition for the defence of the state".

3. See Federal Decree no. 5 497/2005. Efforts are being made to increase the proportion of positions reserved for public officials and a draft bill to this effect is currently in the National Congress.

4. A conflict of interest is defined as a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interest which could improperly influence the performance of [his or her] official duties and responsibilities. A conflict of interest may be real and immediate when public officials are in a situation where their private interests could bias the way they do their jobs. Conflict of interest situations could also be "potential" or "apparent". A potential conflict of interest exists when a public official may have private capacity interests that may be such as to cause a conflict of interest situation in the future. For example, a public official owns a large number of shares in a forestry company, which could, in the future, decide to compete for a timber-production contract with the official's organisation, where the official is currently in charge of all procurement contracts. An apparent conflict of interest exists where it appears that an official has a conflict of interest but this is not in fact the case. For example, the senior official with shares in a corporation has actually made formal internal arrangements to stand aside from all decision making ("recusal") in relation to the contract for which this corporation is competing, in order to resolve the conflict. The arrangements are not known to the public at large, but are satisfactory to the official's organisation (OECD, 2003).

5. The number of members was increased from 6 to 7 in 2007 because of voting procedures, for having an odd number would make the votes more rational.

6. Its current composition includes a former President of the Brazilian Supreme Court, a former President of Brazil's National Bar Association, a former advisor to the National Conference of Brazilian Bishops and a former State Secretary for Justice, Citizenship and Human Rights.

7. Related travel and *per diem* expenditure of Public Ethics Commission members are, however, borne by the Civil House of the Office of the President of the Republic.

8. See Federal Decree no. 1 171/1992, Chapter II, Articles XVI through XXIV.

9. See *www.cgu.gov.br/Publicacoes/GuiaPAD*.

10. Suspension may, however, be converted into a fine, on the basis of 50% of the remuneration of the public official for the period of the original suspension. The decision over whether a suspension can be converted into a fine is left to the discretion of the federal public administration.

11. Chapter 1 of focuses on "crimes committed by public officials against the administration".

12. See 1988 Federal Constitution, Article 41.

13. This protection extends to an official's spouse or partner, as well as family members and dependents.

14. See *www.presidencia.gov.br/estrutura_presidencia/cepub/sugest.*

15. See *http://2ccr.pgr.mpf.gov.br/formulario/denuncia/index.htm.*

Annex 4.A1

OECD Principles for Improving Ethical Conduct in the Public Service

1. Ethical standards for public service should be clear

Public servants need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie. A concise, well-publicised statement of core ethical standards and principles that guide public service, for example in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community.

2. Ethical standards should be reflected in the legal framework

The legal framework is the basis for communicating the minimum obligatory standards and principles of behaviour for every public servant. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action and prosecution.

3. Ethical guidance should be available to public servants

Professional socialisation should contribute to the development of the necessary judgement and skills enabling public servants to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which public servants are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace.

4. Public servants should know their rights and obligations when exposing wrongdoing

Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing.

5. Political commitment to ethics should reinforce the ethical conduct of public servants

Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level, for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing, by providing adequate support and resources for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

6. The decision-making process should be transparent and open to scrutiny

The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.

7. There should be clear guidelines for interaction between the public and private sectors

Clear rules defining ethical standards should guide the behaviour of public servants in dealing with the private sector, for example regarding public procurement, outsourcing or public employment conditions. Increasing interaction between the public and private sectors demands that more attention should be placed on public service values and requiring external partners to respect those same values.

8. Managers should demonstrate and promote ethical conduct

An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public service values and ethical standards. Managers have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, other public servants and citizens.

9. Management policies, procedures and practices should promote ethical conduct

Management policies and practices should demonstrate an organisation's commitment to ethical standards. It is not sufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage some public servants simply to function on the edge of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only delineate the minimal standards below which a government official's actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to.

10. Public service conditions and management of human resources should promote ethical conduct

Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behaviour. Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationalise integrity in the public service. Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on compliance with rules and ethical principles and on achievement of results. Accountability mechanisms can be internal to an agency as well as government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls while allowing for appropriately flexible management. Adequate accountability mechanisms should be in place within the public service.

11. Appropriate procedures and sanctions should exist to deal with misconduct

Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should exercise appropriate judgement in using these mechanisms when actions need to be taken.

Annex 4.A2

Sanctions for ethical breaches and administrative misconduct

Administrative misconduct[1]	Sanction
– To be absent during working hours without prior permission from an official's immediate supervisor. – To refuse access to public documents. – To delegate to another person, except as provided by law, the official responsibilities of an official or the official's subordinates. – To remove, without prior written permission of the competent authority, any document. – To obstruct the progress of a document or the delivery of a public service. – To employ under an official's immediate supervision a spouse, partner or relative within the second civil degree. – To be negligent and lack due diligence in fulfilling an official's duties.	Written warning[2]
– To assign another public official tasks unrelated to the post an official occupies, except in an emergency or temporary situations. – To trade practice of buying and selling of goods or services on the premises of the office, even outside of normal business hours. – To engage in any activities incompatible with an official's public office, function or work schedule.	Suspension for up to 90 days[3, 4]
– To abandon an official post (*i.e.* absent without justification for more than 30 consecutive days). – To be habitually absent (*i.e.* absent for 60 days without sufficient cause within a period of 12 months). – To express grievous insubordination on the job. – To physically assault while on the job a fellow public official or citizen, except in the case of legitimate self-defence or the defence of others. – To engage in commerce or participate in any business partnership, including a mixed-capital enterprise, except as a shareholder or silent partner. – To participate in the management or administration of a private enterprise and engage in business with the state. – To act as an intermediary with government offices, except in the case of Social Security benefits for spouse, domestic partner or relative. – To accept the commission, employment or pension of a foreign state. – To receive, for oneself or someone else, money, assets or any other direct or indirect economic advantage, as commission, kickback or gift from anyone with a direct or indirect interest to benefit from an act or omission in a public official's duties. – To receive direct or indirect economic advantage to facilitate the acquisition, exchange or lease of a movable or immovable asset or the hiring of services by a public organisation at a price higher than the market. – To receive direct or indirect economic advantage to facilitate the alienation, exchange or rent of a public asset or the provision of a service by a public organisation at a price lower than the market. – To use, in private construction or service, vehicles, machinery, equipment or material of any sort, which is owned or at the disposal of a public organisation or its public officials. – To receive direct or indirect economic advantage, or to accept a promise of such advantage, of any kind to tolerate the exploitation or the perpetration of gambling, practicing or promoting prostitution, drug trafficking, smuggling, usury or any kind of illicit activity. – To receive direct or indirect economic advantage to make a false statement about the measurement of public works or services or about the quantity and quality of goods provided to any public organisation. – To acquire for oneself or a third party in the exercise of a mandate, position, job or public office, assets of any nature whose price is disproportionate to the public official's income.	Dismissal

Administrative misconduct1	Sanction
– To take a job or perform an activity for an individual, organisation or association whose interests may be prejudiced or benefited by acts or omissions resulting from the actions of a public organisation. – To receive economic advantage to intermediate the clearance or the investment of public funds. – To receive direct or indirect economic advantage to omit an official act, an arrangement or a declaration. – To incorporate by any means assets, income or funds which pertain to the public organisation. – To use for one's own benefit assets, incomes or funds which pertain to the public organisation..	Dismissal

Notes:

1. This list has been prepared based on Federal Law no. 8 027/1990, Articles 3-5; Federal Law no. 8 112/1990, Articles 116, 117 and 132; and Federal Law no. 8 429/1992, Articles 9 and 11.

2. A penalty warning becomes a suspension for up to 90 days in the case of recurrence.

3. In certain cases, the sanction of suspension may be converted into a fine, on the basis of 50% of the official's remuneration for the period of suspension.

4. Suspension entails the cancellation of remuneration to the official for the period of suspension.

Annex 4.A3

Sanctions for breaches in standards of conduct defined under Brazil's criminal code

Misconduct	Criminal sanction
Embezzlement (*Peculato*): "Misappropriating for oneself or another person, money, valuables or any other movable good, either public or private, resulting from one's official position or function".	2 to 12 years imprisonment and a fine (Article 312).
Embezzlement through the error of another person (*Peculato mediante erro de outrem*): "Misappropriating for oneself, money or any profit received through one's official position or function by error from another person".	1 to 4 years imprisonment and a fine (Article 313)
Entering false data in information systems (*Inserção de dados falsos em sistema de informações*):""Inserting or facilitating the insertion of false data, altering or unlawfully deleting correct data, in the information systems or databases of the public administration for the purpose of obtaining an undue advantage for oneself or for another person".	2 to 12 years imprisonment, and a fine (Article 313-A, as amended by Federal Law no. 9 983/2000).
Modification or unauthorised alteration of information system (*Modificação ou alteração não autorizada de sistema de informações*): "Modifying or altering an information system or computer programme without permission or request of the competent authority".	3 months to 2 years imprisonment and a fine. The penalty is increased by one-third to one-half if the modification results in loss to the public administration (Article 313-B, as amended by Federal Law no. 9 983/2000).
Loss, misappropriation or concealment of books or documents (*Extravio, sonegação ou inutilização de livro ou documento*): "Embezzlement, tax evasion or destruction of books or documents: Loss of an official book or any document, entrusted to the official by virtue of his/her position; withhold it or destroy it, in whole or in part".	1 to 4 years imprisonment if the fact is not more serious crime (Article 314)
Misuse of public fund (*Emprego irregular de verbas ou rendas públicas*): Unlawful employment of public funds or annuities: giving public funds or annuities different application than those established by law.	1 to 3 months imprisonment or a fine (Article 315)
Public graft (*Consussão*): "Demanding for oneself or another person, either directly or indirectly, an undue advantage resulting from one's official position or function, even before assuming an official position or function".	2 to 8 years imprisonment and a fine (Article 316).
Passive bribery (*Corrupção passiva*): "Requesting or receiving for oneself or another person, either directly or indirectly, an undue advantage resulting from one's official position or function, even before assuming an official position or function". If the official performs, delays or omits an official act in violation of their official duty. If an official performs, omits or delays an official act, in violation of their official duty, giving the request or influence of others.	2 to 12 years imprisonment and a fine (Article 317). Above penalty increases by one-third (Article 317§1) 3 months to 1 year suspension or a fine (Article 317§2).
Facilitation of smuggling or embezzlement (*Facilitação de contrabando ou descaminho*): "Facilitating, in violation of official duties, the practice of smuggling or embezzlement".	3 to 8 years imprisonment, and a fine (Article 318)
Malfeasance (*Prevaricação*): "Improperly delaying or omitting an official act, or performing it against the express provision of law, to satisfy personal interests or desire".	3 months to 1 year imprisonment, and a fine (Article 319)

Misconduct	Criminal sanction
Leave the Director of Prisons and/or public organisation to fulfil its duty to seal the prisoner access to telephone equipment, radio or similar, to enable communication with other prisoners or with the external environment.	3 months to 1 year imprisonment (Article 319-A)
Condescension criminal (*Condescendência criminosa*): Public official, because of indulgence, does not blame an inferior/subordinate who has committed an infraction by virtue of his/her position, or when he/she, because of the lack of competence, does not report the fact to a competent authority.	15 days to 1 month imprisonment, or fine (Article 320)
Peddling (*Advocacia administrativa*) Foster, directly or indirectly, private interest before the public administration, taking advantage of an official:	1 to 3 months imprisonment or a fine. If the interest is illegitimate, Suspension for 3 months to 1 year and a fine (Article 321)
Arbitrary violence (*Violência arbitrária*): Practice violence, in practice or on the pretext of exercising it	Detention from 6 months to 3 years beyond the penalty for violence (Article 322)
Dereliction of duty *(Abandono de função):* Abandon public office except in cases permitted by law: – If as a consequence there is public loss. – If it takes place within the geographical border.	15 days to 1 month imprisonment or a fine (Article 323) 3 months to 1 year imprisonment and a fine (Article 323§1) 1 to 3 years imprisonment and a fine (Article 323§2)
Illegal anticipation or extension of official duty *(Exercício funcional ilegalmente antecipado ou prolongado):* [The public official] takes office before legal requirements are accomplished, or stays on it without authorisation, after officially knowing that s/he was dismissed, removed substituted or suspended.	15 days to 1 month imprisonment or a fine (Article 324)
Breaching confidentiality privy to one's position/post (*Violação de sigilo funcional*), including if it enables or facilitates, through assignment, and loan supply a password or otherwise, access to unauthorised persons to information systems or databases of the public administration.	6 months to 2 years imprisonment or a fine. 2 to 6 years imprisonment and fine if the action or omission resulting damage to government or to others (Article 325)
Breaching confidentiality in public procurement (*Violação do sigilo de proposta de concorrência*)	3 months to 1 year imprisonment and fine (Article 326)

Annex 4.A4

Disclosure Declaration of Confidential Information template for high public officials

Presented by public officials under the Code of Conduct of the High Federal Administration (Articles 2 and 4)

I. Personal data

1. Full name		2. Career public official? ☐ Yes ☐ No
3. Position	4. Date of tenure	5. Organisation
6. Residential address		
7. Mailing address	8. Telephone	9. Email

II. Previous activities in the last 12 months

10. Activity	11. Organisation	12. Remuneration (BRL)
a.		
b.		
c.		
d.		

III. Other professional activities outside the public function

13. Activity	14. Organisation	15.Remuneration (BRL)
a.		
b.		
c.		
d.		

IV. Property, rights and liabilities

16.Type	17. Date of purchase or construction	18. Administrator (if third party)	19. Updated value
a.			
b.			
c.			
d.			
e.			
f.			
g.			

V. Situations that may give rise to conflict of interest

20. In the last 12 months prior to the tenure in office I worked professionally or received financial support from individuals or companies that develop activity in the area or field related to the professional competence of the public position that I occupy.

☐ Yes ☐ No

20.1 Identification of the person or legal entity	20.2 Activity performed or financial support received
a.	a.
b.	b.
c.	c.
d.	d.

20.3 Measures adopted to prevent conflict of interests:

21. I am a partner or affiliated to a legal entity, with or not-for-profit, or associated to an individual that develops activity in an area or field related to the competence of the public position that I occupy.

☐ Yes ☐ No

21.1 Identification of the person or legal entity	21.2 Percentage of participation in the society
a.	a.
b.	b.
c.	c.
d.	d.

21.3 Measures adopted to prevent conflict of interest situations from arising:

22. I am a partner or affiliated to a legal entity, with or not-for-profit, or associated to an individual that is a supplier of goods or services or receives funds or incentives from the government.

☐ Yes ☐ No

22.1 Identification of the person or legal entity	22. Percentage of participation in the society
a.	a.
b.	b.
c.	c.
d.	d.

22.3 Measures adopted to prevent conflict of interest situations from arising:

23. Upon taking office I had investment in fixed or liquid assets whose value or price may be affected by governmental decision or policy about which I have or will have insider information due to the post I occupy.

☐ Yes ☐ No

23.1 Type of investment and financial institution	23.2 Value (BRL)
a.	
b.	
c.	
d.	

23.3 Measures adopted to prevent conflict of interest situations from arising:

24. I have a direct relative up to the fourth degree(*), collateral or by affinity, that operates in the area or field similar to the professional competence of the public position or function that I practice.

☐ Yes ☐ No

24.1 Name of relative	24.2 Identification of the entity for which s/he work
a.	a.
b.	b.
c.	c.
d.	d.

24.3 Measures adopted to prevent conflict of interest situations from arising:

(*)The degree of relation is counted by the number of generations, rising from one of the relatives to the common ancestor and down to another relative.

25. I have a direct relative up to the fourth degree(*), collateral or by affinity, who is a partner of a legal entity that operates in the area or field related to the professional competence of the public office that I occupy.

☐ Yes ☐ No

25.1 Name of relative	25.2 Identification of the entity which s/he is a partner
a.	a.
b.	b.
c.	c.
d.	d.

25.3 Measures adopted to prevent conflict of interest situations from arising:

26. I have a direct relative up to the fourth degree(*), collateral or by affinity, who works in the body or entity of the public administration, with whom, by reason of office, I have to maintain institutional relations.

☐ Yes ☐ No

26.1 Name of relative	26.2 Identification of the entity or organisation in which s/he works and the position s/he holds
a.	a.
b.	b.
c.	c.
d.	d.

26.2 Measures adopted to prevent conflict of interest situations from arising:

27. Private interests or other situations that may give rise to conflicts of interest with the exercise of the public position or function and measures to prevent conflict of interest:

I commit to the veracity of the facts reported and take responsibility for possible omissions, which may result in transgression of the Code of Conduct of the High Federal Administration.

_____

(City, day, month, year)

_____

(Register of Individual Taxpayers number and signature)

I. Instructions for filling out the form

1. Full name, without abbreviations.

2. Inform if you are integrant, as a servant or employee, of the permanent staff of the executive, legislative or judicial branches, of the Union of state or municipality, including its autarchies, foundations, public enterprises or mixed economy societies.

3. Indicate the public position, as follows:

a. Minister of State	f. President or director of state-owned enterprise or equivalent
b. Secretary of State	g. President or director of mixed-capital enterprise or equivalent
c. Secretary of ministries, including executive	h. Dean, Provost, Director General or Director of Education Institution
d. President or director of Foundation	I. Occupants of positions of the special nature
e. President or director of agencies or equivalent	j. Other (specify)

4. Date of tenure in the public office that bounded you to the Code of Conduct of the High Federal Administration.

5. Organisation in which you took over in the current public function.

6. Address where you maintain your permanent residence, including city, state and zip code.

7. Enter mailing address if different from business address.

8. Contact telephone number, preceded by the area code.

9. E-mail address of systematic use to receive communications from the Public Ethics Commission.

10. Inform activities exercised within 12 months prior to holding office.

11. Inform the name of the organisation where you held the activity indicated in item 10.

12. Inform the cumulative remuneration over the past 12 months from the exercise of the activity indicated in item 10.

13. Inform the professional activities exercised concomitantly with the exercise of the public position, whether to another public entity, for a private party or independently. Indicate in item 27 the measures adopted so that the exercise of each of these activities does not configure conflict with the public service.

14. Enter the name of the concerned person or entity to whom the activity indicated in item 13 is exercised.

15. Inform the remuneration as to whether annual, monthly or otherwise, regarding the activity indicated in item 13.

16. Indicate property and rights that make up your assets, and those of your spouse, partner and dependents.

17. Indicate day, month and year (DD/MM/YY) of the acquisition or creation of good, right or debt.

18. Indicate who is responsible for administering the assets or rights set out in item 16, if other than yourself. The appointment as administrator does not apply to goods for personal use, such as the house where the family resides, the automobile the family uses, etc.

19. Indicate the effective value or the estimated market value in the month of possession in public office, their property or rights listed in item 16.

20-27. Report situations that could actually or potentially cause a conflict of interest between the exercise of public management and private interests, as well as how you intend to avoid them.

II. Attention, please immediately inform the Public Ethics Commission when:

a. Any material change in your heritage, even if this change only results in a transfer of property to a spouse or dependent.

b. Acquire, directly or indirectly, control of company or business.

c. Receive an offer of employment or work, even if it is not your intention to accept it.

d. Assume any obligation parallel to your professional public service, even if unpaid or outside the area of jurisdiction of the office you hold.

e. Receive an offer of gift or favour from a person or entity, even though it is not your intention to receive the gift or favour; when the refusal of this is not possible or when returning it can cause you a burden/onus, it can be given to the Institute of Historic and National Art-IPHAN, if of historical, cultural or artistic value; donated to entity of care or charitable character recognised as a public utility, or even incorporated as assets of the public authority in which you serve.

f. Associate with persons or legal entities with an interest in the organ or body of public administration, but not for profit.

g. Declare yourself unable to attend the examination of matter or participate in decision making under Article 10 of the Code of Conduct of the High Federal Administration.

III. If in doubt, consult the Public Ethics Commission [Details removed]

Annex 4.A5

Disclosure of Income and Assets template for federal public officials (paper submission)

Disclosure of assets	
( ) Entrance into position	Fill out items 1, 2, 8, 9, 11 and 12
( ) Departure from position	Fill out all items
( ) Annual update	Fill all items, with information relative to the earnings made in the previous year and the assets of the last day of the fiscal year

(1) Identification of public official			
Individual taxpayer number	Electoral registration number	Date of birth	
Name:			
Address:			
Type:	Street:		
Number:	Street (cont.):	Neighbourhood:	Postal code:
City	State:	Area code:	Telephone:

(2) Dependents		
Individual taxpayer number	Relationship	Date of birth

(3) Income received from corporate organisations		
Name of source:	National Registry of Legal Entities number:	Income (BRL)
Total		

(4) Income received from corporate organisations by dependents			
Name of source:	National Registry of Legal Entities number:	Natural Persons Register number of dependent	Income (BRL)
Total			

(5) Income received from abroad			
Month of receipt	Non-corporate person (A)	Foreign (B)	Total income (BRL)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
Total			

(6) Income received from abroad by dependents			
Individual Taxpayer number	Non-corporate person (A)	Foreign (B)	Total income (BRL)
Total			

(7) Additional income	
Explanation	Income (BRL)
Scholarship for studies and/or research as long as the amount does not represent an advantage to the sponsor	
Money that originated from life insurance	
Compensation due to contractual obligation, including Workforce Reduction Programme (*Programa Voluntário de Desligamento*)and work related injury/accident	
Surplus from asset sale	
Surplus from investment dividends	
If aged 65 or more, income that derived from pension	
Savings accounts	
Other:	

(8) Declaration of income based on rights of use				
Description of assets: date, value, etc.				Situation as of 31 December (BRL)
Description of asset	Types	Year (t-2)	Year (t-1)	
Total				
Type: Real Estate – Land, Apartment, Shop, etc.				

(9) Debt		
Debt, name of the beneficiary or creditor	Situation as of 31 December (BRL)	
	Year (t-2)	Year (t-1)
Total		

(10) Information of spouse and dependents	
Individual taxpayer number:	Income

(11) Assets if the spouse and other dependents		
Assets of the spouse and other informed above	( ) Yes	( ) No
In case of "No," explain below.		

Annex 4.A6

Disclosure of Income and Assets template for federal public officials (authorisation of access to tax records)

Federal Ministry of Planning, Budget and Management	Authorisation Access to Disclosure of Annual Income Adjustment of the Income Statement of Non Corporate Person Form

Information on the public official:

Names:	Individual Taxpayer number:	
Integrated Human Resources Administrative System Registration		
Post/Function		Code
Unit		Extension

Authorisation

I authorise, for the purposes of fulfilling the demands of Federal Law no. 8 429/1992, Article 13§4, to access the annual disclosure presented to the Secretariat of Federal Revenue with the respective ratification, also taking into consideration of Federal Decree no. 5 483/2005 Article 3§2

_____

(City, day, month, year)

_____

(Natural Persons Register number and signature)

Note: Every public official within the federal public administration must grant access through electronic copies of the annual income tax statements, with corrections, submitted to the Secretariat of Federal Revenue or annually submit, in hardcopy a private interest disclosure which comprises their private assets. These must be filed with official's respective Office of Human Resources Unit. A public official is considered as any individual occupying an appointed position at any level or nature, public employees, directors and employees of companies, state actors engaged in national office and deliberative councils and those hired for a specified time, under Federal Law no. 8 745/1993 (see Office of the Comptroller General Ordinance no. 298/CGU/MP/2007, Article 1).

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Chapter 5

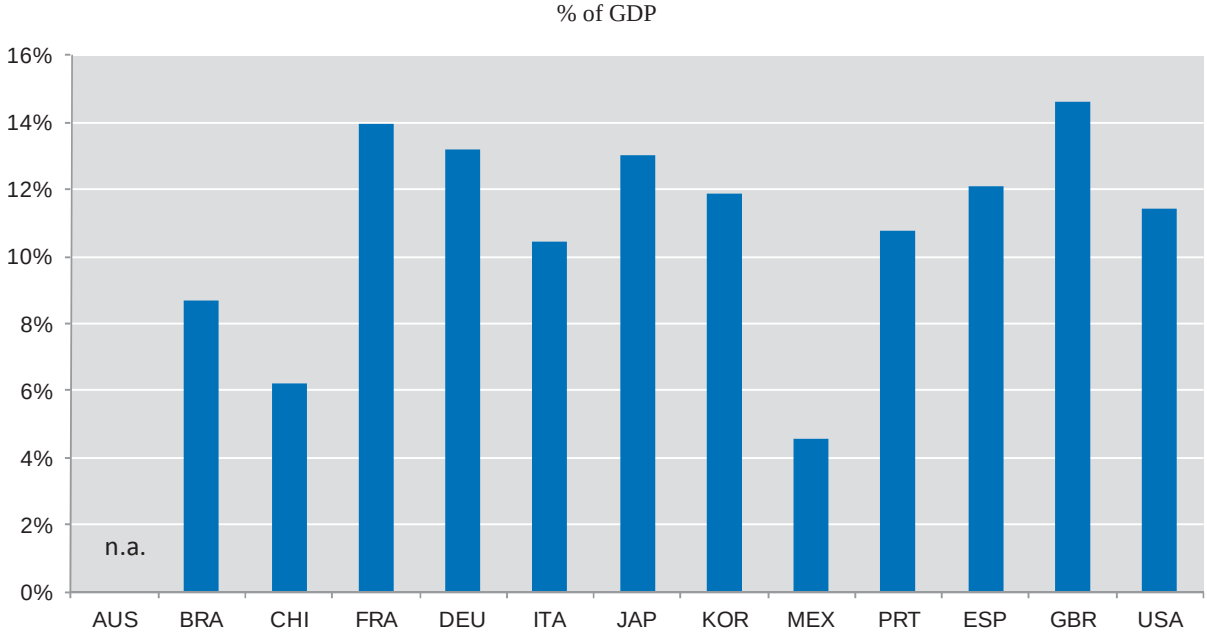
Enhancing integrity in public procurement

Public procurement is recognised as a strategic instrument for public service delivery – but also as an activity vulnerable to misconduct and (active and passive) waste. This chapter examines actions by the federal government of Brazil to utilise information technologies to improve transparency, control and efficiency in procurement. The proposals for action focus on *i)* introducing performance indicators and internal assessments to guide improvements within the procurement function; *ii)* introducing clear and concise "how to" manuals to support the capability of the procurement workforce; and *iii)* delegating responsibility to management to conduct due diligence during tender evaluation and prior to contract award. These can serve to transform the procurement into a strategic function, strengthening evidence-based learning and improvements within the procurement system.

Introduction

Public procurement is recognised as a strategic instrument for public service delivery – but also an activity vulnerable to misconduct and (active and passive) waste (see *e.g.* OECD, 2005; OECD, 2007a; OECD, 2007b, OECD, 2009a).[1] Its prominence as a policy instrument relates to its total value: general government procurement accounts for between 4-14% of GDP in OECD member countries (see Figure 5.1). In Brazil, conservative estimates suggest that general government procurement accounts for approximately 8.7% of GDP. Of this, 1.6% is attributed to the federal government, 1.5% to state governments, 2.1% to local governments and 3.2% is attributed to state-owned and mixed capital enterprises.[2] Given the substantial financial flows and direct linkage with service delivery, many governments in OECD member countries are taking steps to enhance integrity within their procurement systems. The role of integrity in public procurement as a measure to prevent corruption within the government is recognised in the OECD "Principles for Enhancing Integrity in Public Procurement" (OECD, 2008a, 2009a; see also Annex 5A1) and international conventions against corruption.[3]

Figure 5.1. **Size of public procurement markets in Brazil and select countries, 2008**



Note: Brazil data for 2004.

Source: OECD System of National Accounts; Federal Ministry of Planning, Budget and Management.

Enhancing integrity in public procurement is not simply about increasing transparency and limiting management discretion in decision-making processes. Measured discretion in procurement decision making is needed to achieve value for money, often defined as the most economically advantageous tender. Rather, enhancing integrity necessitates recognising the risks inherent throughout the entire procurement cycle, developing appropriate management responses to these risks and monitoring the impact of risk mitigating actions. Moreover, it requires transforming procurement into a strategic and capable profession rather than a simple administrative process. This transformation necessitates developing knowledge and creating tools to support improved

procurement management decision making and assessment. Enhancing integrity in public procurement must also be placed within the broader management systems and reform of the public administration.

This chapter examines efforts within Brazil's federal public administration to enhance integrity in public procurement. While the focus is the federal public administration, the national legislature and federal judiciary increasingly use the same procurement management information systems. In 2009, approximately 9% of contract volume (27 600 contracts) and 15% of their value (BRL 8.7 billion; USD 5.2 billion; EUR 3.7 billion)[4] was attributed to public organisations outside the federal executive branch. Approximately 80% of procurement by the federal judiciary is conducted using the same systems as the federal public administration: the Integrated General Service Administration System (*Sistema Integrado de Administração de Serviços Gerais*). The Federal Senate and Chamber of Deputies plan to commence using this same system in the near future. A formal memorandum of agreement was already signed, but no explicit date has been set for its implementation.

The drive for enhancing integrity in public procurement in Brazil has been led by the Federal Ministry of Planning, Budget and Management (*Ministério do Planejamento, Orçamento e Gestão*), the Office of the Comptroller General of the Union (*Controladoria-Geral da União*) and the Federal Ministry of Justice (*Ministério da Justiça*).

- The Federal Ministry of Planning, Budget and Management, through the Secretariat for Logistics and Information Technology (*Secretaria de Logística e Tecnologia da Informação*), is responsible for formulating and promoting the implementation of policies and guidelines regarding public procurement and administrative contracts. While in the past the secretariat has focused on the procurement of goods and services, during the last few years its responsibilities have extended to include public works. This was previously the responsibility of the Secretariat of Planning and Strategic Investment (*Secretaria de Planejamento e Investimentos Estrateégicos*) in the same ministry. The Secretariat for Logistics and Information Technology also manages the Integrated General Service Administration System and federal procurement portal (ComprasNet) used to manage procurement activities by organisations of the direct and agencies and foundations within the indirect public administration.
- The Office of the Comptroller General of the Union, through the Secretariats of Federal Internal Control (*Secretaria Federal de Controle Interno*) and Corruption Prevention and Strategic Information (*Secretaria de Prevenção da Corrupção e Informações Estratégicas*), focuses on preventing and detecting waste in public procurement. These secretariats use computer-assisted audit techniques to identify procurement irregularities and may audit procurement. It is also responsible for managing the Transparency Portal of the Federal Public Administration, which provides real-time information on government spending incurred through public procurement. In addition, through the Inspectorate General of Administrative Discipline *(Corregedoria-Geral da União)*, the Office of the Comptroller General of the Union maintains a National Registry of Ineligible and Suspended Suppliers (*Cadastro Nacional de Empresas Inidôneas e Suspensas*). The Inspectorate General of Administrative Discipline also has the power to investigate allegations of misconduct conducted by public officials involved in public procurement.

- The Federal Ministry of Justice, through the Secretariat of Economic Law (*Secretaria de Direito Econômico*), investigates cases of suspected bid rigging and develops capacity to assist procurement authorities in identifying and preventing cartel activities in public procurement.[5] This has been supported by establishing, in May 2007, a dedicated Public Procurement Unit. This unit works in close co-operation with the Office of the Comptroller General of the Union, Federal Court of Accounts, the Office of the Federal Public Prosecutor (*Ministério Público Federal*) and the Department of the Federal Police (*Departamento de Policia Federal*).

The remainder of this chapter is structured in four sections. The first section examines procurement developments in Brazil, including renewed dynamism in public investments and the introduction of complementary policy goals. These goals include supporting the development of micro- and small enterprises, sustainable or "green" procurement and innovation. The second section examines transparency in public procurement throughout the procurement cycle. It includes a discussion of the preference by the federal government to use unrestricted competition and reverse auctions as a means to increase efficiency, control and transparency in public procurement – although the high use of exemptions and waivers to competition warrants attention by the government. The third section examines efforts to prevent waste and misconduct in public procurement, including efforts to address collusion in procurement and bid rigging in the private sector. It includes the adoption of new audit techniques and plans to introduce risk management, as well as efforts to fight bid rigging and sanction suppliers for poor performance. The fourth section focuses on the need to strengthen the capability of the procurement system in Brazil. It includes the development of the procurement workforce and the introduction of performance reviews as a basis for strengthening evidence-based learning and improvements within the procurement system.

Public procurement developments in Brazil

Two developments prompt a review of integrity in public procurement in Brazil. First, there has been renewed dynamism in public investment in recent years, a trend that is expected to continue in coming years as the country prepares to host the 2014 FIFA World Cup and the 2016 Olympic Games. Second, the federal government is increasingly becoming oriented towards the inclusion of complementary goals in public procurement. These include using public procurement to target micro- and small companies, sustainability (*i.e.* green) and innovation.

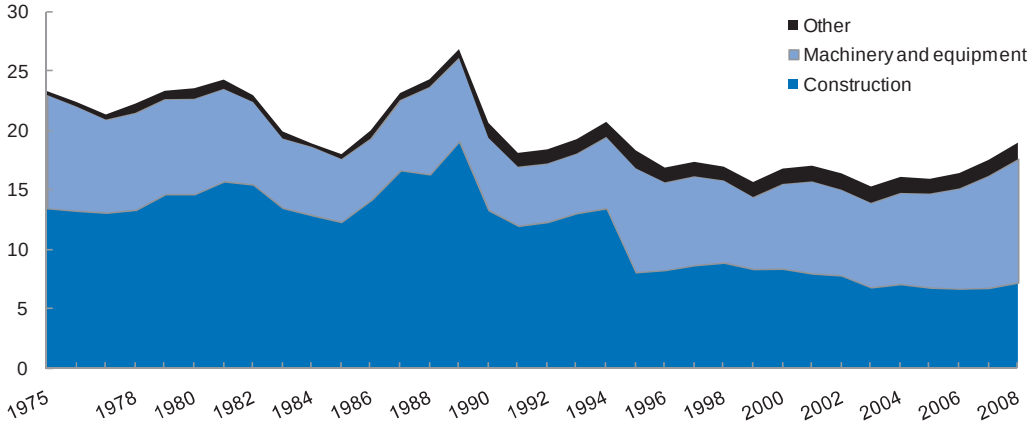
Renewed dynamism in public investment attributed to the Accelerated Growth Programme, economic stimulus and mega-sporting events

Renewed dynamism in public investment is essential for raising Brazil's growth potential. The Accelerated Growth Programme (*Programa de Aceleração do Crescimento*) allocate approximately BRL 800 billion (USD 478 billion; EUR 344 billion) to infrastructure between 2008 and 2013. This programme prioritises transport, energy, sanitation, housing and water resources. More recently, in February 2009, the federal government announced that spending on infrastructure would increase by a further 29% as a means of offsetting the economic impact of the financial crisis. This increase comes after particularly low levels of public infrastructure spending during the 1990s (see Figure 5.2) and raises concern over the capability of federal public organisations to effectively manage the rapid increase in the number and value of

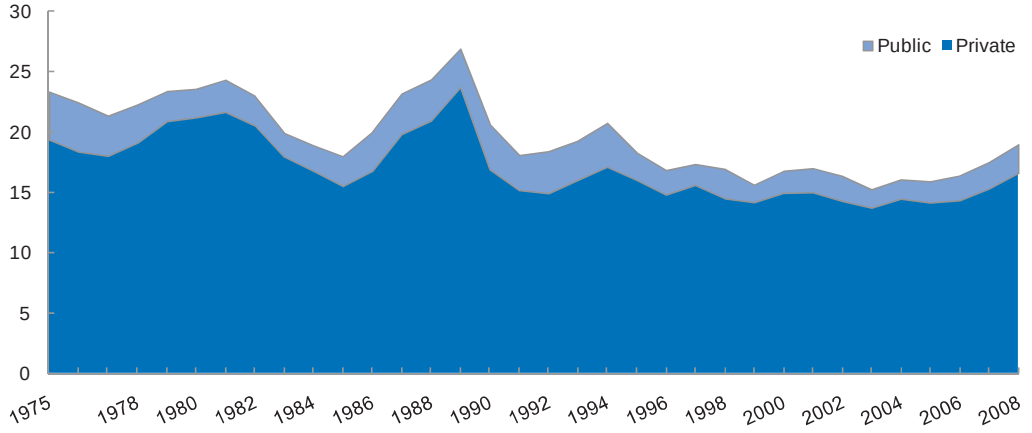
contracts. The reduction in public infrastructure procurement during the 1990s was most notable in the electricity and transport sectors.[6] To support the on-time delivery of the Accelerated Growth Programme, accountability for the delivery of a project has been raised to the level of federal minister instead of the usual project committee, and there is greater flexibility for the reallocation of resources between projects to reward better performing projects.[7]

Figure 5.2. **Trends in Brazil's general government investment**

A. Gross fixed capital formation as a % of GDP



B. Public and private investment as a % of GDP

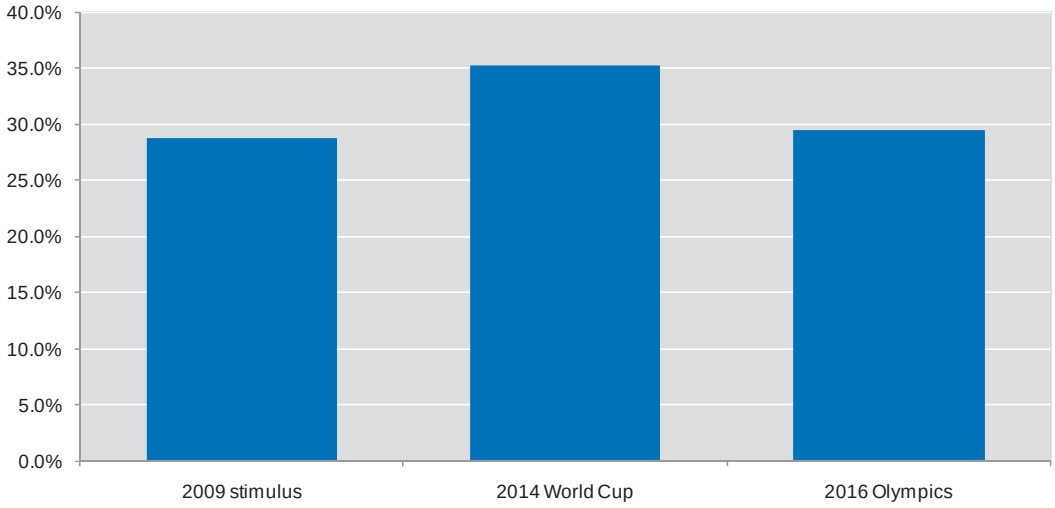


Source: OECD (2009), *OECD Economic Surveys: Brazil 2009*, OECD Publishing, Paris, doi: 10.1787/eco_surveys-bra-2009-en.

In the coming years, public procurement of infrastructure will again increase due to the 2014 FIFA World Cup and the 2016 Olympic Games. The federal government will spend BRL 10.4 billion (USD 6.2 billion; EUR 4.5 billion) on the World Cup, along with BRL 5.5 billion (USD 3.3 billion; EUR 2.4 billion) by state and municipal governments. This will be followed by BRL 12.5 billion (USD 7.5 billion; EUR 5.4 billion) in investments for the 2016 Olympic Games. Each event alone equates to approximately 30% of current procurement spending of the general government sector

(*i.e.* federal, state and municipal, see Figure 5.3). A number of actions have already been taken to emphasise transparency, control and accountability for these mega-sporting events. These actions include the establishment of oversight bodies within the government and an explicit commitment to proactive real-time transparency (see Annex 5.A2). There have been parallel actions within the non-governmental sector such as, for example, formalising corporate self-regulation through a series of sector agreements and developing local administration transparency indicators for event host cities.

Figure 5.3. **Increase in Brazil's general government investment relative to 2009 levels**



Source: For 2009 stimulus: Schwartz et al. (2009), "Crisis in Latin America: Infrastructure, Employment and the Expectations of Stimulus", *Policy Research Working Paper*, No. 5009, World Bank, Washington, D.C.; Transparency Portal of the federal public administration for World Cup and Olympics investment estimates, Brazilian Institute of Geography and Statistics (IBGE) for GDP.

Whereas some OECD member countries have sought to increase infrastructure investment through public-private partnerships (see OECD, 2008b; OECD, 2010a), their use in Brazil has been limited to date. This has been despite the promulgation of Federal Law no. 11 079/2004 on Public-Private Partnerships and the creation, in 2004, of a dedicated Public-Private Partnership Unit within the Federal Ministry of Planning, Budget and Management.[8] A substantial number of OECD member countries have established, or are establishing, a dedicated public-private partnership unit with sector specialists and professionals experienced in public-private partnerships (see Table 5.1). A dedicated public-private partnership unit is defined as any organisation set up with full or partial aid of the government to ensure that necessary capacity to create, support and evaluate multiple public-private partnership agreements is available and clustered together within government (OECD, 2010a).[9]

Table 5.1. **Dedicated public-private partnership units in Brazil and select countries**

Central government

Has a dedicated unit	Does not have a dedicated unit
Brazil (2004),[1] France (2005), Germany (2003),[2] Italy (1999), Japan (2000), Korea (1999), Portugal (2003), United Kingdom (1997)	Australia,[3] Canada,[4] Mexico, Spain, United States

Notes:

1. Brazil: dedicated public-private partnership units exist at the level of individual states, including Minas Gerais.

2. Germany: dedicated public-private partnership units also exist at the level of individual states, including Baden-Württemberg, Bavaria, Brandenburg, Bremen, Hamburg, Hessen, Mecklenburg-Western Pomerania, Lower Saxony, North-Rhine Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia.

3. Australia: dedicated public-private partnership units exist at the level of individual states, including New South Wales, Victoria.

4. Canada: dedicated public-private partnership units exist at the level of individual states, including Alberta, British Columbia, Ontario and Quebec.

Source: Adapted from OECD (2010), *Dedicated Public-Private Partnership Units: A Survey of Institutional and Governance Structures*, OECD Publishing, Paris, doi: 10.1787/9789264064843-en.

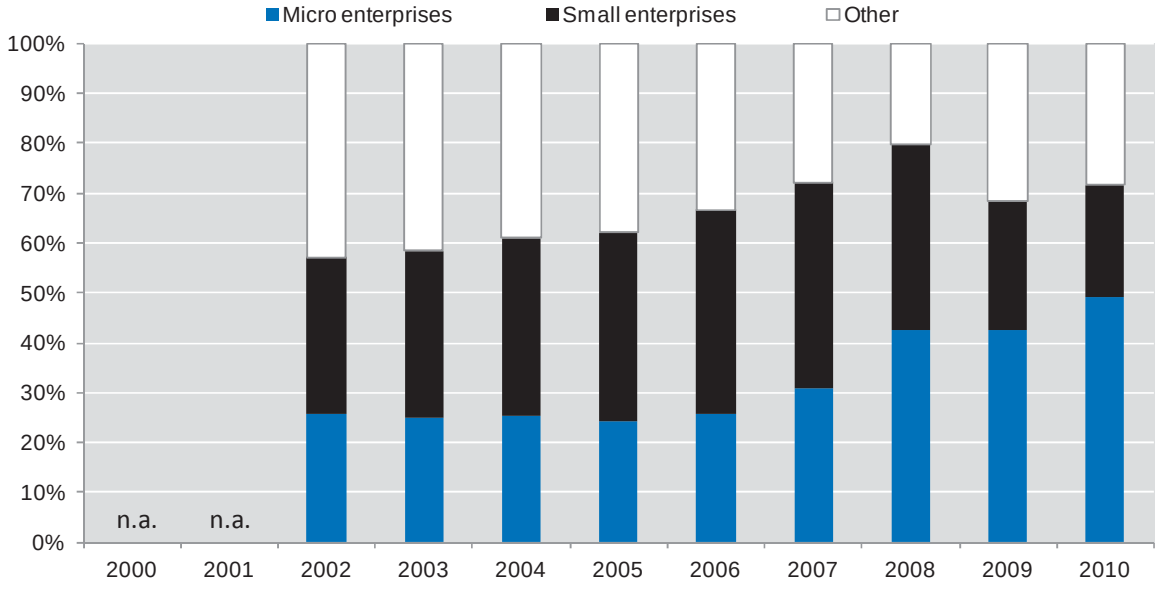
Growing attention to the inclusion of complementary policy goals – social, green and innovation – in public procurement

Brazil's federal public administration has established goals for targeting micro- and small enterprises using public procurement, drawing inspiration from the United States among other countries.[10] Complementary Law no. 123/2006 establishes the right for the public administration to give different treatment to micro- and small enterprises in the design and award of public contracts. The underlying goal is to promote economic and social development, increase efficiency and promote innovation. Micro-enterprises are defined in Brazil as having annual gross revenue of below BRL 240 000 (USD 143 500; EUR 103 000) and small enterprises as having annual gross revenue of between BRL 240 000 and BRL 2 400 000 (USD 1 435 000; EUR 1 030 000). Under this law micro- and small enterprises may become the sole recipient of administrative contracts of less than BRL 80 000 (USD 48 000; EUR 34 500). The public administration may additionally require larger suppliers to sub-contract up to 30% of a total contact to micro- and small enterprises. A quota may be, however, established for micro- and small enterprises of up to 25% of a public organisation's total contracts including sub-contracts.

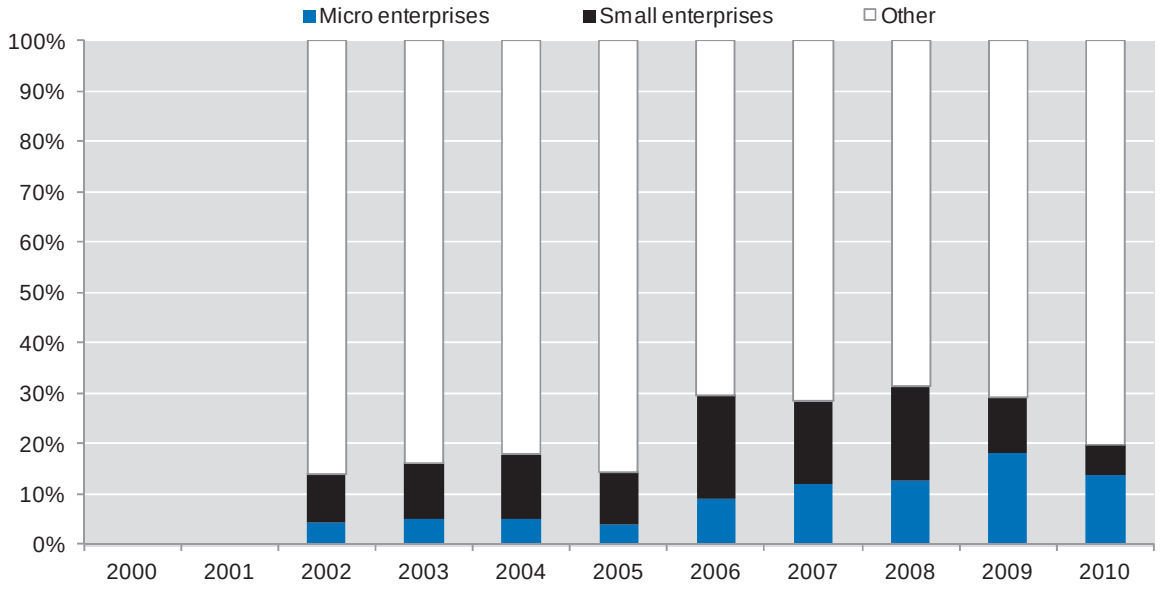
In 2009, approximately 70% of federal contracts were issued to micro- and small enterprises: 43% to micro- and 26% to small enterprises. In terms of contract value, approximately 30% of contracts were issued to micro- and small enterprises: 18% to micro- and 11% to small enterprises. These figures have grown steadily since 2002, both in terms of the total number of contracts and total contract value, coinciding with the introduction of Complementary Law no. 123/2006.

Figure 5.4. **Brazil's federal public administration contracts by supplier size**

A. Number of contracts as a % of total



B. Value of contracts as a % of total



Notes: Data for 2000 and 2001 unavailable.

Source: Secretariat for Logistics and Information Technology, Federal Ministry of Planning, Budget and Management.

In 2010, the federal government set norms establishing priorities and rules for public administration regarding the environment and launched a portal on sustainable public

contracting (*http://cpsustentaveis.planejamento.gov.br*).[11] Normative Instruction no. 1/2010 proposes to institutionalise green procurement, defined as including a criteria of environmental sustainability, as a federal policy instrument. The Federal Ministry of Planning, Budget and Management has subsequently issued practical guidance (*i.e.* manuals, guides) and developed training materials to support the inclusion of green criteria in the procurement process. Green procurement is a relatively new development in many OECD member countries. Prior to 2003, only a handful of OECD member countries, including Japan, Norway and Sweden, reported systematically considering "green" in their public procurement policies. In 2010, 19 OECD member countries reported providing non-legislative guidance to central government procurement officials regarding green procurement (OECD, 2007c; 2011).[12] The emphasis on tools reflects a realisation by governments that a lack of tools or incentives, rather than the legal framework, has hampered the success of green objectives (see Table 5.2). The share of green procurement is a difficult and contested measure in OECD member countries, as quantitative information is often unreliable or unavailable.

Table 5.2. **Non-legislative guidance on green procurement practices in Brazil and select countries, 2010**

Central government

Country	Manuals, guides, etc.	Code of practice	Training materials	*Ad hoc* advice
Australia	●	o	o	o
Brazil	●	o	●	o
Canada	●	o	●	●
Chile	●	o	●	o
France	●	●	●	●
Germany	●	o	o	o
Italy	●	o	●	●
Japan	●	o	o	o
Korea	●	o	o	o
Mexico	o	o	o	o
United Kingdom	●	o	●	o
United States	●	o	●	●

Notes: ● = yes; o = no.

Source: Adapted from OECD (2011), *Government at a Glance 2011*, OECD, Paris, doi: 10.1787/22214399.

More recently, public procurement of innovation has received increasing attention, as part of the push for greater government investment in innovation. A common definition of public procurement of innovation is the purchase of goods or services that have yet to appear on the market, *i.e.* pre-commercial procurement. It has been proposed as a key element of a demand-oriented innovation policy, together with regulation, universities and public research institutions and public research and development subsidies (see *e.g.* Aschhoff and Sofka, 2008). A number of OECD member countries, including Ireland, Korea and the United Kingdom, have moved to articulate policies on public procurement of innovation.[13]

An ongoing debate exists about the inclusion of complementary objectives in public procurement.[14] The arguments for complementary objectives include the importance of government in demonstrating leadership and the aggregate size of government's purchasing power for the development and diffusion of new goods and services. On the other hand, concern exists over the real impact of policy instruments targeting complementary objectives. Governments may not always be a lead actor in a single product market especially as public procurement is often fragmented across different

public organisations and geographic markets. The introduction of complementary objectives into procurement decision making can also give rise to increased integrity risks in contract design and planning, award and contact management.

Transparency throughout the public procurement cycle

Transparency is one of the main means to enhance integrity in public procurement. It supports a level playing field for suppliers and contributes to achieving value for money in government operations. In addition, it empowers non-governmental organisations, the media and citizens to scrutinise public procurement as a means of complementing traditional accountability and control mechanisms. In Brazil, legislation supports the disclosure of information on contract opportunities as widely as possible in a consistent and timely manner. New technologies also play an important role in providing easy and real-time access to information for potential suppliers, track information and facilitate monitoring of procurement processes. A number of challenges exist to further promoting transparency in procurement. Electronic systems, while enhancing transparency and accountability throughout the procurement cycle, do not provide a "one-stop shop" for information. Transparency could also be enhanced in the pre-tender phase of the procurement cycle through the preparation and publication of procurement plans by federal public organisations. Although the introduction of electronic reverse auctions has increased transparency and access to public procurement, exemptions and below-threshold procurements warrant examination.[15]

The federal government gives preference to competition and reverse auctions as a means of efficiency, control and transparency

Federal Laws no. 8 666/1993 on Procurement and Administrative Contracts and no. 10 520/2002 on Reverse Auctions define the modalities for public procurement in Brazil. This framework establishes preference for unrestricted competition (*concorrência*) in general and for reverse auctions (*pregão*) – and electronic reverse auctions (*pregão electonico*), in particular – for off-the-shelf goods and standardised services. This also applies to state-owned and mixed-capital enterprises in which the government has a controlling share. Three objectives underline the preference for electronic reverse auctions: *i)* efficiency, by promoting more streamlined procedures and standardising goods and services procured; *ii)* control, by making information available to audit authorities; and *iii)* transparency, by providing online real-time information to stakeholders and opening participation to a larger pool of suppliers.

Unrestricted competition is required for procurement above BRL 650 000 (USD 390 000; EUR 280 000) for goods and services, and BRL 1 500 000 (USD 890 000; EUR 645 000) for works and engineering services (see Table 5.3). These thresholds are not indexed to price levels and have remained unchanged since 1998. Brazil's threshold for unrestricted competition for works is relatively low compared with European OECD member countries, yet relatively high compared to the same threshold for goods and services. In European OECD member countries, the (unrestricted) competition threshold is EUR 4 845 000 for works and EUR 125 000 for goods and services. A bill in Brazil's National Congress (*Projeto de Lei da Câmara* no. 32/2007) proposes to increase these figures. Experience from OECD member countries highlights that increasing the thresholds for competition in public procurement is challenging, and indexing thresholds can be a solution.

The requirement for publishing procurement notices is established by law. The minimum publicity time for procurement notices is counted from the last publication of the tender notice or the actual availability of tender documents, whichever date is later. Procurement notices are required to be published at least once in the *Official Gazette of the Union*, as well as a daily newspaper of wide circulation and a daily newspaper in the city or region where the work will be performed or the service provided. Procurement committees may also use other media to increase competition. Federal Law no. 8 666/1993 on Procurement and Administrative Contracts establishes that procurement notices must indicate where interested suppliers and citizens can read the full text of the announcement and all information about the tender. Any amendments must also be disclosed in the same media and for the same period of time as the original notice, except where the change does not affect the formulation of proposals.

In addition, a prior public hearing must be held for tenders or a series of simultaneous or successive tenders with an estimated value exceeding 100 times the competition threshold of works and engineering services (*i.e.* BRL 1.5 million). The hearing must be convened at least 15 working days before the planned date of publication of the call for tenders, with a notice published at least 10 working days before the hearing through the same channels as those for publishing the tender notice.

Table 5.3. **Thresholds and minimum publicity time for public procurement notices in Brazil**

A. Procurement thresholds (in BRL)

Procurement modality	Goods and services	Works and engineering services
Unrestricted competition (*concorrência*)[1]	More than 650 000	More than 1 500 000
Price comparison (*tomada de precos*)[2]	Less than 650 000; More than 80 000	Less than 1 500 000; More than 150 000
Invitation (*convite*)[3]	Less than 80 000	Less than 150 000
Bid contest (*concurso*)	For the procurement of objects of technical, scientific or artistic nature.	
Reverse auction (*pregão*)	For the procurement of off-the-shelf goods and standardised services.	

B. Minimum publicity time for procurement notices

Method	Minimum time
Unrestricted competition when the contract to be signed is a "turnkey" contract or when the bidding criterion is "best technical offer" or "technical offer and price"[4]	45 days
Unrestricted competition, in the case not specified above	30 days
Price comparison, when the bidding criterion is "best technical offer" or "technical offer and price"	
Price comparison, in the case not specified above	15 days
Invitation	5 days

Notes:

1. Unrestricted competition: involving any interested parties that fulfil, in the preliminary eligibility stage, the minimum qualifications for the successful delivery of a bid object, as outlined in the bid notice.

2. Price comparison: involving parties either already duly registered or those meeting the registration requirements up to three days prior to submission of the bid proposals, subject to the applicable eligibility criteria.

3. Invitation: involving at least three interested parties, whether registered or not, engaged in the relevant business segment invited by the contracting unit, as well as any registered parties engaged in the same business segment that express an interest in taking part in the bidding procedure at least 24 hours prior to submission of the bid proposals.

4. The Federal Ministry of Planning, Budget and Management notes that "turnkey" is in practice not used in Brazil because goods, services and works must be procured by component.

Source: Adapted from Federal Law no. 8 666/1993 on Procurement and Administrative Contracts as amended by Federal Law no. 9 648/1998.

There are several key differences between reverse auctions and other procurement modalities in Brazil. First, reverse auctions are conducted by a single auctioneer and a supporting committee of up to three officials rather than a larger tender committee, reducing the human resources need for procurement processes. Second, the minimum time for publication of the procurement notice is 8 working days for reverse auctions rather than 15 for restricted competition (*i.e.* price comparison) and up to 45 working days for unrestricted competition. Third, reverse auctions use post- rather than pre-qualification of suppliers, premising selection first and foremost on best price before evaluating other qualification requirements (*e.g.* financial resources, technical capacity, legal requirements, etc.). The latter is seen as particularly important, as pre-qualification is seen as a major source of administration and judicial procurement appeals.

There are no minimum or maximum thresholds guiding the use of reverse auctions. This modality is obligated for all procurement of off-the-shelf goods and standardised services. In the case of reverse auctions, procurement notices must be made available on Comprasnet and in the *Official Gazette of the Union* regardless of the estimated value. In addition, reverse auctions above BRL 160 000 (USD 95 000; EUR 70 000), and electronic reverse auctions above BRL 650 000 (USD 390 000; EUR 280 000), must be published in newspapers with predefined circulation (see Table 5.4). The notice should be published at least eight working days ahead of the auction to allow potential suppliers to prepare their tenders. The federal government publishes the extract of concluded contracts in the *Official Gazette* within 20 days from the date of signature, indicating the type of bid and reference number. Non-compliance with publication requirements of procurement notices gives rise to possible administrative sanctions against the responsible public official.

Table 5.4. **Thresholds for publicity for presentational and electronic reverse auctions in Brazil**

Means of publication	Estimated value of the goods or services using presentational reverse auctions	Estimated value of the goods or services using electronic reverse auctions
Official Gazette of the Union and electronically via the Internet	< BRL 160 000	< BRL 650 000
Official Gazette of the Union; electronically via the Internet; and a newspaper of wide local circulation	BRL 160 000 > X > BRL 650 000	650 000 > X > BRL 1 300 000
Official Gazette of the Union; electronically via the Internet; and a newspaper of wide regional or national circulation	> BRL 650 000	> BRL 1 300 000

Source: Federal Law no. 10 520/2002, Article 4; Federal Decree no. 3 555/2000, Article 11; Federal Decree 5 450/2005, Article 17.

The use of electronic reverse auctions within the federal public administration has grown substantially since FY 2003. They accounted for approximately 85% of the volume of procured off-the-shelf goods and standardised services in FY 2007, compared to less than 1% in FY 2003 (the year following the promulgation of Federal Law no. 10 520/2002 on Reverse Auctions introducing presentational and electronic reverse auctions as a procurement modality). The Secretariat for Logistics and Information Technology estimates that in FY 2009 alone the use of reverse auctions yielded savings of approximately BRL 6 billion (USD 3.6 billion; EUR 2.6 billion), 93% of which was achieved through the electronic reverse auctions. Using the same method of calculation, annual cost savings from electronic reverse auctions was approximately 23% between FY 2002 and FY 2009, and 12% for presentational reverse auctions. This methodology – used by the Secretariat for Logistics and Information Technology to calculate cost

savings – focuses on the difference between the procuring authority's market estimates and the final reverse auction price. Thus, poor price estimates by procuring units can inflate estimated cost savings. A more appropriate measure of cost savings is the difference between the pre-auction price proposals and the final auction price.

Box 5.1. The introduction of reverse auctions as a procurement modality in Brazil

Reverse auctions were first introduced in Brazil in the General Telecommunications Law (Federal Law no. 9 472/1997), which granted the National Telecommunications Agency (Agência Nacional de Telecomunicações) the right to use this modality if it is more advantageous to the administration. Between 1997 and 2000, the National Telecommunications Agency was the sole public organisation allowed to use reverse auctions.

In 2000, as part of preparation for the 2001/2003 Pluri-Annual Plan (*Plano Plurianual*), the federal government conducted a study to examine means to reduce costs in the procurement of goods, services and works under the Investment Plan's Management Improvement Programme. The Pluri-Annual Plan establishes a clear multi-year output orientation, setting out government priorities for the medium term, explicit targets and indicative budgetary appropriations for each programme.

The study included, among other things, an assessment of the impact of reverse auctions in the National Telecommunications Agency. Although the benefits to the National Telecommunications Agency of using reverse auctions were clear (*i.e.* price reductions), the take-up of this procurement modality was low. The study stated that low take up was influenced by a number of factors including:

- lack of guidance materials and the need to train procurement officials in the use of reverse auctions;
- resistance on the part of procurement officials to use something different from the *status quo*; and
- lack of definition of the goods and services that could be procured using reverse auctions.

The results of the study were used as input into formulating a proposal for establishing reverse auctions as a standard procurement modality within the federal public administration. It resulted in Provisional Measure no. 2 182-18/2001 and converted into Federal Law no. 10 520/2002 on Reverse Auctions and substantiated by Federal Decree no. 5 450/2005 on Electronic Reverse Auctions.

Source: de Almeida (2006), "Role of ICT in Diminishing Collusion in Procurement", International Public Procurement Conference Proceedings 21-23 September, *www.unpcdc.org/focus-areas/e-government-procurement.aspx*.

While reverse auctions provide a number of benefits to procuring authorities, it is important not to overstate their role as a procurement modality for governments. Reverse auctions restrict suppliers to compete on price alone at the expense of quality, much to the dismay of public officials that are the users of goods and recipients of services. Competition on price alone can also lead to reduced supplier innovation, as anything above the minimum specifications is not recognised by procurement officials. In addition, reverse auctions ignore past supplier performance other than gross examples of bad performance that warrant blacklisting of suppliers. Thus, while well suited to well-specified and simple off-the-shelf goods and standardised services, caution is required in expanding the use of reverse auctions to as many procurement transactions as possible.

Transparency is supported by new technologies as a means to both support a level playing field for suppliers and encourage direct social control

Brazil's federal public administration makes publicly available information on its procurement laws and policies, general and specific information related to bid submission and contract award (see Table 5.5). In addition, Brazil allows public tracking of procurement spending, something that is achieved in approximately one-quarter of OECD member countries. The federal government could, however, enhance transparency in both the pre-tender and post-award phases of the public procurement cycle. For example, in the pre-tender phase, federal public organisations could publish annual procurement plans to allow suppliers to better understand and meet the government's needs. Such information could also help public organisations to strategically source goods, services and works while enhancing control and monitoring of procurement actions. Procurement plans are, however, not routinely prepared at present by federal pubic organisations. At the other end of the procurement cycle, federal public organisations could publish information on contract amendments above a certain threshold on the federal procurement portal. Such information can deter suppliers from submitting unrealistic prices and encourage more accountable contract management within public organisations.

Table 5.5. **Public availability of procurement information in Brazil and select countries, 2010**

Country	Laws and policies	General information for potential bidders	Specific guidance on application procedures	Procurement plan	Tender documents	Selection and evaluation criteria	Contract award	Justification for awarding contract to selected contractor	Contract modifications	Tracking procurement spending
Australia	●	◻	◻	●	◻	◻	●	■	◻	○
Brazil	●	■	◻	○	◻	◻	●	●	○	●
Canada	●	●	●	○	◻	◻	◻	■	○	○
Chile	●	●	●	●	●	◻	●	●	◻	●
France	●	●	●	◻	◻	●	◻	■	●	■
Germany	●	●	○	○	■	■	○	○	○	○
Italy	●	●	●	●	●	●	●	■	●	■
Japan	●	●	●	●	●	●	●	●	●	■
Korea	●	●	●	●	●	●	●	●	●	●
Mexico	●	●	●	●	●	●	●	●	◻	●
United Kingdom	●	●	●	●	○	○	●	◻	○	○
United States	●	●	◻	◻	◻	◻	◻	○	■	◻

Notes: ● = always; ■ = upon request; ◻ = sometimes; ○ = never

Source: Adapted from OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, doi: 10.1787/22214399.

In Brazil, information on procurement by the federal public administration is made available through the federal procurement portal (*www.comprasnet.gov.br*), the *Official Gazette of the Union* (*www.redegoverno.gov.br*), the transparency pages of individual public organisations, the Transparency Portal of the Federal Public Administration (*www.portaldatransparencia.gov.br*) and the federal public works portal (*www.obrasnet.gov.br*). Figure 5.5 provides a summary of the information available through each portal by phase of the procurement cycle. None of these portals, however,

provides a one-stop shop for information needed by suppliers or citizens. As such, the federal government could integrate procurement information into one portal as a one-stop shop for suppliers and citizens. As part of this process, attention could focus on understanding the use of the various procurement portals as a basis for evaluating the appropriateness of information and means in which it is made available.

Figure 5.5. **Comparison of procurement information provided by Brazil's various**

	Pre-tendering	Tendering	Post award
Comprasnet	– Procurement legislation – Unified Register of Suppliers – Catalogues of Registered Goods and Services	-– Tender and reverse auction notices – Current (live) electronic reverse auctions – Minutes of completed electronic reverse auctions	
Transparency pages		– Tender and reverse auction notices	– Budget disbursement data
Transparency Portal			– Budget disbursement data
Obrasnet			– Monitoring of delivery of select works – *Ex post* cost measures

Comprasnet is both Brazil's central procurement website and electronic procurement portal. As the central procurement website, it provides ready access to all procurement laws (*i.e.* federal laws, provisional measures, decrees, regulatory instruments, ordinances and resolutions) and other general information for suppliers and citizens. The portal also includes contract award information, including those conducted outside Comprasnet, extracted from the Integrated General Service Administration System. Information on atypical goods, non-standardised services and engineering services are made available through the *Official Gazette of the Union*, in both its paper and electronic versions. Comprasnet does not provide information on procurement plans of individual public organisations, contract modifications or amendments of procurements conducted using restricted and unrestricted competition modalities.

As Brazil's electronic procurement portal, Comprasnet provides suppliers access to information on scheduled and past electronic reverse auctions, and also allows them to participate in live electronic reverse auctions. Information is also available through Comprasnet on suppliers registered in the Catalogues of Registered Goods and Services (*Catálogo de Materiais* and *Catálogo de Serviços* respectively). The catalogues define specifications, quality standards and common classification for 45 000 off-the-shelf goods and common services purchased by administrative units within individual federal public organisations. Suppliers registered in the Unified Registration System for Suppliers of the Federal Public Administration may also opt to receive automatic alerts on tenders and quotations by type of goods and service and geographic area.[16] Finally, Comprasnet is used to publish information on procurement statistics. This data is, however, available only in pre-generate tables and figures preventing citizens from generating their own analysis.

Tracking of contract disbursement is available on an annual basis through the Transparency Portal of the Federal Public Administration and the transparency pages of federal public organisations (see Chapter 2). Created in November 2004, the Transparency Portal provides free real-time access to budget execution data, without

registration or passwords, in order to support monitoring by citizens of federal government operations. Through the Transparency Portal citizens may search payments associated with contracts by public organisation, not-for-profit organisation or recipient. Federal public organisations must also maintain a transparency page for the dissemination of data and information on budget execution including, among other things, procurement and administrative contracts. Information on the transparency pages includes updates on ongoing and completed bidding procedures: the names of contractors, the object of the respective contracts, the value of contracts, the corresponding contractual terms and the bidding modality employed. While the Transparency Portal and transparency pages let citizens search contract disbursements by supplier name, they cannot search by identification number, limiting the utility of the search functions.[17]

In parallel, the Public Works Portal of the Federal Public Administration (Obrasnet) provides information on all projects financed by federal funds operated by the Federal Savings Bank of Brazil (*Caixa Economica Federal*), a major provider of government housing. The portal facilitates monitoring of projects executed by the Federal Savings Bank including works progress reports, often accompanied with photographs, and information on the civil works inputs cost through the National Index on Civil Construction (*Custo Nacional da Construção Civil*). Queries may be searched by year, federal unit, municipality and programme. In addition, Obrasnet provides citizens with a channel to give their opinions about the performance and benefits of individual public works projects for their respective communities.

Table 5.6. **Services offered by centralised e-procurement portal in Brazil and select countries, 2010**

	Applications that facilitate the interface with potential bidders							Contract management tools			
Country	Searching for tender announcements	Downloading all documents related to tenders	Prequalification systems	2-way communication with citizens, bidders	Electronic submission of bids	Electronic reverse auction	E-catalogue	Tracking record of outcomes of contracts	Electronic payment schemes (*e.g.* e-invoicing)	Statistics, data related to past procurement	Contract management plan templates
Australia	●	●	●	●	●	○	○	○	○	●	○
Brazil	●[2]	●[2]	●[2]	○	○	●	●	○	○	●	○
Canada	●	●	○	○	○	○	○	○	○	○	○
Chile	●	●	○	●	●	○	●	○	●	●	●
France	●	●	○	●	●	●	●	●	●	●	●
Germany	●	●	●	●	●	●	●	●	○	●	○
Italy	●	●	●	●	●	●	●	●	○	●	○
Japan[1]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Korea	●	●	●	●	●	●	●	●	●	●	●
Mexico	●	●	○	●	●	●	●	●	○	○	○
United Kingdom[1]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
United States	●	●	○	○	○	○	○	○	○	●	○

Notes: ● =yes; ○ = no; N/A = not applicable.

1. Japan; United Kingdom: no centralised e-procurement website.

2. Brazil: Unified Registration System for Suppliers of the federal public administration allows for a minimum pre-qualification of suppliers, ensuring that suppliers are not included in the National Registry of Ineligible and Suspended Contractors, that their tax liabilities are paid, etc. Registration in the Unified Registration System for Suppliers of the federal public administration is not mandatory for suppliers that wish to participate in tenders.

Source: Adapted from OECD (2011), *Government at a Glance 2011*, OECD, Paris, doi: 10.1787/22214399.

Box 5.2. **Content of electronic reverse auctions proceedings published on Comprasnet**

All the proceedings of the electronic reverse auctions are published on Comprasnet. This includes:

- the name and detailed information on the bidders and the procuring organisation;
- the object of procurement and the budgeted unit price for each;
- the initial price proposal of all bids;
- the initial and closing time of the reverse auction session and eventual suspensions;
- all decisions taken by the reverse auctioneer;
- the communications exchanged between bidders and the reverse auctioneer in the "chat";
- the complaints files, if any, and decisions taken on them;
- clarifications requested and given; and
- complete information on the adjudication procedure and any procedure that would be dealt with in the real world, such as the testing of samples, etc.

All this information, automatically generated by the system, is electronically signed by the reverse auctioneer and is published on Comprasnet at the end of the e-reverse auction session. An extract is also generated and automatically sent to the Official Gazette of the Union for publication the following working day in both paper and virtual editions. The procuring authority also publishes an extract of the results on their respective organisation's transparency page.

Source: Secretariat for Logistics and Information Technology, Federal Ministry of Planning, Budget and Management.

Competitive tenders and electronic reverse auctions are the default, but large use of exemptions warrants examination

Federal Law no. 8 666/1993 on Procurement and Administrative Contracts sets forth the specific cases in which competitive bidding procedures are not required for purposes of public procurement. There are 28 legislated exemptions to competitive procedures that allow the use of direct contracting (see Annex 5.A3). The obligation for federal public organisations to hold competitive tenders may also be waived where there is no competitive market, precluding effective competition. The law provides three examples of a no-bid situation as a means of illustration, but notes that other situations could also give rise to direct contracting: *i)* where there is only one possible supplier (*i.e.* an exclusive producer, firm or commercial representative); *ii)* where the procurement requires specialised technical services from professionals or suppliers with recognised expertise; and *iii)* where a supplier has obtained the recognition and acclaim of the specialised media and public opinion. In each case the decision must be documented and

justified. For example, stating that there is only one possible supplier may be substantiated through a certificate issued by the local business association or equivalent.

In FY 2009, exemptions and waivers to competition accounted for 23% of total contracts and 86% of total contract values, down from 51% and 93% respectively in FY 2002 (see Figure 5.6). A large share of exemptions and waivers (93% of total contracts and 10% of total contract values) are for goods and services below invitation thresholds. An additional 2% of total contracts and 33% of total contract values use emergency procedures (see Table 5.7). This picture appears to be attributable to weak incentives for procurement planning, but requires further examination by the federal government. Public officials' concern over the effectiveness of the procurement review and remedies system also contributes to the high use of exemptions to competitive procurement procedures. The procurement review and remedies system is described as slow and many believe that suppliers misuse it to disrupt procurement procedures. There is no clear explanation for the high use of exemptions and waivers. In response to this concern the federal government may benefit from conducting a review of below-competition threshold and emergency procurement. Such a review could also help shed light on whether a lack of incentives for procurement planning exists, and how planning could generate an additional efficiency dividend.

In the case of exemptions and waivers from competitive tendering, Federal Law no. 8 666/1993 on Procurement and Administrative Contracts obliges public officials to receive formal approval from a senior official within their organisation. A written statement must be submitted to the senior official containing: *i)* a description of the situation giving rise to the tender exemption; *ii)* the reasons for selecting the specific supplier or service provider; *iii)* a justification of the price; and *iv)* any documentation approving the project or activity for which the goods or services will be used. To ensure the validity of the act, the statement regarding the exemption must be published in the *Official Gazette of the Union*, including its online version, within five days of its approval. Box 5.3 provides an illustration of a good practice within the federal public administration in the use of exemptions or waivers from competitive tenders: the internal procedures of the Office of the Comptroller General of the Union. Publishing of this information is supported by the Electronic Posting of Purchases and Contracts module of the Integrated General Service Administration System, allowing for timely publication of information.

Figure 5.6. **Use of various procurement modalities in Brazil's federal public administration**

A. Value of contracts by modality
(% of total)

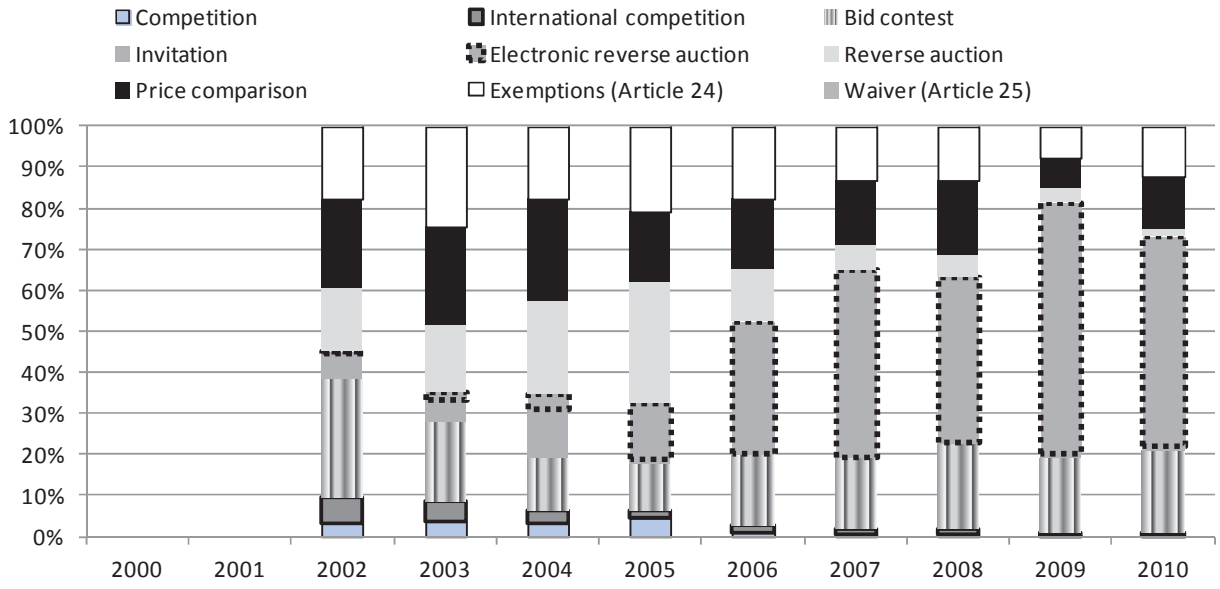
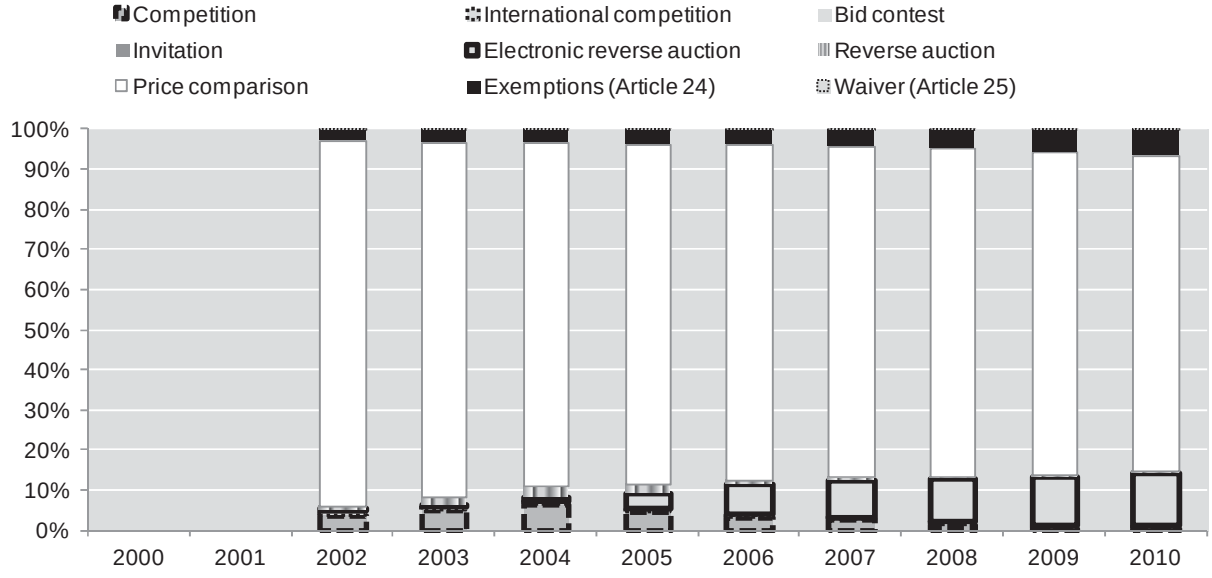


Figure 5.6. **Use of various procurement modalities in Brazil's federal public administration***(cont'd)*

B. Number of contracts by modality
(percentage of total)



Notes: Data for 2000 and 2001 unavailable.

Source: Secretariat for Logistics and Information Technology, Federal Ministry of Planning, Budget and Management.

Table 5.7. **Most frequently used exemptions to competitive procedures in Brazil's federal public administration, 2009**

% of total value of contracts		% of total number of contracts	
In cases of emergency or public calamity, that may cause injury or endanger the safety of people, works, services, equipment and other property, public or private. This applies only for goods necessary to meet emergency situations and portions of works and services that can be completed within a maximum of 180 consecutive calendar days after an emergency or disaster. It prohibits contract extension. (Exemption type 4)	33.4	For other goods and services worth up to 10% of competition threshold, each step or series of stages of work, service or purchase, there are separate bids to match, preserved the appropriate modality for the implementation of the object in bid. (Exemption type 2)	92.7
In contracting a Brazilian research, educational or institutional development organisation recognised by the regulation or statute, or an organisation devoted to the social rehabilitation of prisoners, provided the organisation maintains a sound integrity and professional reputation and is not for profit. (Exemption type 13)	20.4	In cases of emergency or public calamity, that may cause injury or endanger the safety of people, works, services, equipment and other property, public or private. This applies only for goods necessary to meet the emergency situation and portions of works and services that can be completed within a maximum of 180 consecutive calendar days after an emergency or disaster. It prohibits contract extension. (Exemption type 4)	1.9
For other goods and services worth up to 10% of the invitation threshold, each step or series of stages of work, service or purchase, there are separate bid to match, preserved the appropriate modality for the implementation of the object in bid. (Exemption type 2)	9.8	For the procurement of goods intended exclusively for scientific and technological research with funding from the Co-ordination of Improvement of Higher Education Personnel (*Coordenação de Aperfeiçoamento de Pessoal de Nível*), the Brazilian Innovation Agency (*Financiadora de Estudos e Projetos*), the National Council for Scientific and Technological Development (*Conselho Nacional de Desenvolvimento Científico e Tecnológico*) or other research institutions accredited by the National Council for Scientific and Technological Development for this specific purpose. (Exemption type 21)	1.6
For the contracting of supply or delivery of electric energy and natural gas with a concessionaire, permit holder or other licensed organisation, in accordance with existing legislation. (Exemption type 22)	8.4	For works and engineering services worth up to 10% of the competition threshold, provided they refer to parts of the same work or service or for works and services of the same nature and at the same place that they can be held jointly and simultaneously. (Exemption type 1)	1.1
For the purchase or lease of buildings or property to meet the essential needs of the administration, where the choice is conditioned by installation and location, provided the price is compatible with market value, as previously appraised. (Exemption type 10)	5.9	In contracting a Brazilian research, educational or institutional development organisation recognised by regulation or statute, or an organisation devoted to the social rehabilitation of prisoners, provided the organisation maintains a sound integrity and professional reputation and is not for profit. (Exemption type 13)	0.7

Notes: See Annex 5.A4 for a full list of exemptions to competitive tendering.

Source: Secretariat for Logistics and Information Technology, Federal Ministry of Planning, Budget and Management.

Box 5.3. **Process for granting exemption to competitive procurement modalities: the case of the Office of the Comptroller General of the Union**

To illustrate the process for bid exemption or waiver (*i.e.* direct contracting), the following highlights the procedures adopted within the Office of the Comptroller General of the Union.

- The administrative unit requiring a particular good or service submits a request to the Directorate of Internal Management including the technical specifications of the object to be procured.
- Justification and corresponding documentation must be provided for the reasons underlying an exemption or waiver, together with information that the contracted price is consistent with current market values.
  - Where the legal framework is sufficiently clear regarding exemptions and waivers, responsibility falls upon the administrative units requesting the procurement to provide sufficient justification. For example, when there is only one supplier for a certain product or service and therefore no possibility for competition.
  - In other cases, responsibility falls upon the procuring authority to provide sufficient justification. For example, when procuring products worth up to 10% of the invitation threshold, the procurement authority must check and decide whether an exemption can be used.
- The Directorate of Internal Management prepares the procurement documentation, including information on available budget resources and the grounds for the suitability of the exemption or waiver.
- The request is forwarded to the Office of Legal Affairs for a technical opinion on the suitability for the use of an exemption and waivers. In cases where *ex ante* opinions may be waived for immediate delivery, the Office of Legal Affairs is required to render an *ex post* opinion as to the legality of the contractual clauses.
- Following receipt of a favourable legal opinion, the administrative process is referred back to the Directorate of Internal Management. Notices of exemptions and waivers must be subsequently published in the *Official Gazette of the Union*.

Source: Office of the Comptroller General of the Union.

Measures to prevent waste and corruption by officials and suppliers

There is increasing recognition that specific measures are needed in the public and private sectors to identify and address risks of waste and corruption in public procurement. In Brazil, efforts have been made by the federal public administration to strengthen internal control and standards of conduct within the federal public administration. Measures include the adoption of new audit techniques and risk management. As in the case of measures to support transparency, these have been supported by new technologies. The federal government has also sought to raise awareness of bid rigging and has introduced mandatory certificates of independent bid determination as a means of preventing procurement cartels.

Internal control is supported by common back-office systems and is being strengthened by the introduction of new audit techniques and risk management

The 2001 "Handbook of the Internal Control" issued by the Secretariat of Federal Internal Control lays out the guidelines, principles, concepts and technical rules governing the activities within the federal public administration (see Chapter 3). For example, it notes that the structure of individual organisations and administrative units should provide for the separation of duties related to the authorisation and approval of operations, control and accountability so as to ensure that no single individual performs competencies and duties in a manner inconsistent with this principle. There are no formal rules establishing specific requirements regarding the level of authority needed for approval of procurement procedures and signing contracts. Organisations of the direct and indirect administration establish internal rules defining the departments and authorities responsible for procurement and the award of contracts. As a general observation, more strategic and higher value procurement and contracts are approved by more senior authorities, sometimes even secretary or director. For example, Secretariat of Federal Revenue internal rules establish procedures, both for the central and regional offices, for the completion, approval and authorisation of procurement and formalisation of contracts.

Internal control is supported by the Integrated General Service Administration System, including a number of modules specific to procurement and administrative contracts. For example, the Unified Registration System for Suppliers of the federal public administration facilitates a common streamlined process for the pre-registration of suppliers that wish to provide goods or services to federal public organisations. The Electronic Posting of Purchases and Contracts System (*Sistema de Divulgação Eletrônica de Compras*) forwards procurement notices for publication in the *Official Gazette of the Union* and automatically publishes reverse auction information on Comprasnet. The Integrated Price Posting System (*Sistema de Preços Praticados*) registers and stores the prices of previous contracts awarded by federal public organisations, serving as a price reference for procurement officials. The Commitment Registration System (*Sistema de Minuta de Empenho*) automatically records information on scheduled payment commitments associated with awarded contracts in the Federal Government Integrated Financial Administration System. The Contract Management System (*Sistema de Contratações*) facilitates the registration and financial monitoring of contracts for procurement officials within federal public organisations.

Federal Law no. 8 666/1993 on Procurement and Administrative Contracts obliges procurement officials to document the procurement procedures with a view to gauging their regular agents of control. It enumerates that every procurement procedure should record: *i)* justification of hiring; *ii)* a detailed description of the object, budget estimate of costs, and physical and financial schedule of disbursements, if any; *iii)* cost spreadsheets; *iv)* guarantee of budgetary reserve, with an indication of the respective items; *v)* authorisation to open the bidding; *vi)* designation of the tender committee or auctioneer and support staff; *vii)* legal advice; *viii)* tender and its annexes, if applicable; *ix)* the draft of the termination of employment or equivalent, as appropriate; *x)* original of the written proposals and supporting documents; *xi)* the minutes of the trading session, the registration of bidders approved, the submitted written and verbal proposals in order of ranking and the analysis supporting the decision, and *xii)* proof of publication of notice of the announcement of the outcome of the bidding, the extract of the contract and other actions relating to advertising of the event, as appropriate. Each procurement procedure is given a file (a physical portfolio) in which the documents are put in chronological order

and receive a sequential number. The files are uploaded on Comprasnet with hardcopies stored in the procurement unit's office.

Modern audit techniques are increasingly used for the detection and monitoring of possible irregularities in procurement and administrative contracts

In 2006 the Office of the Comptroller General of the Union launched a pilot to identify potential conflicts of interest between public officials and suppliers in public procurement and administrative contracts. The Office of the Comptroller General of the Union sampled 13 million suppliers and 588 000 public officials and found that some 2 500 federal public officials were owners or shareholders of approximately 2 000 companies which had supplied over BRL 400 million (USD 239 million; EUR 172 million) in goods and services to the federal public administration between 2004 and 2006. Moreover, there were cases in which 313 of the 2 000 companies had supplied goods and services to the public organisation in which its owner or shareholder was employed. While these results did not immediately imply misconduct, they resulted in investigations by the Secretariat of Federal Internal Control. No information was available on the results of further investigations into these cases.

Following this exercise, the Office of the Comptroller General of the Union launched the Public Spending Observatory (*Observatório da Despesa Pública*) in 2008 as the basis for continuous detection and sanctioning of misconduct and corruption. Through the Public Spending Observatory, expenditure data is crossed with other government databases as a means of identifying atypical situations that, while not *a priori* evidence of irregularities, warrant further examination. As discussed in Chapter 3, the Public Spending Observatory is a horizontal project within the Office of the Comptroller General of the Union. It is operated by the Secretariat of Corruption Prevention and Strategic Information but draws upon the expertise of the Secretariat of Federal Internal Control and the Inspectorate General of Administrative Discipline.

Based on experience over the past several years, a number of routine cross checks related to procurement and administrative contracts have been created by automatically crossing data on a daily basis. This exercise generates "orange" or "red" flags that can be followed up and investigated by officials within the Office of the Comptroller General of the Union. In many cases, follow-up activities are conducted together with the special advisors on internal control within each organisation of the direct federal public administration (*i.e.* federal ministries) and internal audit units within organisations of the indirect federal public administration (*i.e.* agencies and foundations). Examples of these cross checks related to procurement and administrative contracts include possible conflict of interest, inappropriate use of exemptions and waivers and substantial contract amendments. A number of cross checks also relate to suspicious patterns of bid-rotation and market division among competitors by sector, geographic area or time, which might indicate that bidders are acting in a collusive scheme (see Box 5.4). Finally, cross checks also exist regarding the use of Federal Government Payment Cards and administrative agreements (*convenios*) (see Chapter 3).

Box 5.4. **Computer-assisted audit tracks used by the Office of the Comptroller General of the Union to identify possible procurement irregularities**

1. Business relations between suppliers participating in the same procurement procedure.
2. Personal relations between suppliers and public officials in procurement procedures.
3. Fractioning of contracts in order to use exemptions to the competitive procurement modality.
4. Use of bid waiver when more than one "exclusive" supplier exists.
5. Non-compliance by suppliers with tender submission deadlines.
6. Bid submission received prior to publication of a procurement notice.
7. Registration of bid submissions on non-working days.
8. Possibility of competition in exemptions.
9. Supplier's bid submissions or company records with the same registered address.
10. Participation of newly established suppliers in procurement procedures.
11. Contract amounts above the legally prescribed ceiling for the procurement modality used.
12. Contract amendments above an established limit, in violation of the specific tender modality.
13. Contract amendments within a month of contract award, in violation of the specific tender modality.
14. Commitments issued prior to the original proposal date in the commitment registration system.
15. Evidence of bidder rotation in procurement procedures.
16. Bidding procedures involving suppliers registered in the Information Registry of Unpaid Federal Public Sector Credits (*Cadastro Informativo de Créditos Não Quitados do Setor Público Federal*).*
17. Use of reverse auctions for engineering services.
18. Micro- and small enterprises linked to other enterprises.
19. Micro- and small enterprises with shareholders in other micro- and small enterprises.
20. Micro- and small enterprises with earnings greater than BRL 0.24 million or BRL 2.40 million, respectively.

Note: Information Registry of Unpaid Federal Public Sector Credits includes information on: *i)* individuals and companies with financial obligations due and not paid for federal public organisations; and *ii)* individuals who are inscribed in the Register of Individual Taxpayers (*Cadastro de Pessoas Físicas*) and legal persons who are declared unfit for the National Registry of Legal Entities (*Cadastro Nacional de Pessoa Jurídica*).

Source: Office of the Comptroller General of the Union.

While computer-assisted audit techniques have been successful at crossing procurement data with other government databases to identify orange and red flags, it serves more as an *ex post* control by the Office of the Comptroller General of the Union. Its application, together with responsibility for vetting orange and red flags, could be devolved to become a means of *ex ante* due diligence by public managers. This could strengthen internal control and emphasise the accountability of procurement officials and public managers. Care, however, is necessary to ensure that red flags are properly vetted and employed.

Procurement and administrative contracts are among the first areas to receive attention in pilots to introduce operational risk management

The Office of the Comptroller General of the Union is currently in the process of developing a generic risk management methodology to guide public managers in self-assessing vulnerabilities in their programmes and areas of operations. In 2006, the first methodology was applied to 3 public organisations as a pilot: the Federal Ministries of Culture, Transport and Social Development and the Fight Against Hunger.[18] Attention focused on developing an understanding of risks in various decision nodes in the procurement activities of public organisations. The pilot of the methodology addressed off-the-shelf goods and standardised services procured using electronic reverse auctions; it did not include risks related to other procurement modalities or more complex procurement procedures, which may be exposed to different vulnerabilities. Teams from each of pilot ministry first mapped all the decision points associated with electronic reverse auctions. Annex 5.A4 provides an example of a process map for the Federal Ministry of Social Development and the Fight Against Hunger. Second, the teams examined a series of questions relating to: *i)* the information used in or required for each decision point; *ii)* the scope of internal control at each decision point; and *iii)* the interim and final outcomes associated with each decision point.

The application of the pilot uncovered a number of difficulties and also provided some unique insights into each federal ministry's internal operations. Foremost among the difficulties identified in the application of the methodology was the complexity of the process. The methodology was developed in an academic fashion, and used too many forms. In the Federal Ministry of Culture, officials identified a lack of understanding of stock controls resulting from an absence of procurement planning and internal communications between procurement and other officials. (The process of developing these methodologies and the differences in their approach is discussed in Chapter 3.) Based on the pilot experience, the Office of the Comptroller General of the Union is revising the methodology and proposes to launch a second version in the future. A number of adjustments have been made to the second risk management methodology, namely: *i)* focusing on activities rather than processes; *ii)* developing actionable indicators rather than open-ended questions; and *iii)* shifting from risk identification to risk management.

Private interest disclosures are being used to facilitate investigation of illicit enrichment by procurement officials

Establishing and maintaining systems for procurement officials to disclose their private interests supports both monitoring of illicit enrichment and prevention of potential conflicts of interest. The vast majority of OECD member countries require procurement officials to disclose, rather than altogether prohibit, private interests. Disclosures support

monitoring of illicit enrichment by allowing verification of legitimate income and wealth held by procurement officials as input into administrative disciplinary investigations and criminal proceedings. In Brazil, procurement officials are required – like all public officials – to submit to private interest disclosures annually and before they change position or function or leave office.[19] Disclosures are submitted to the human resource unit of the public organisation where the official works or is employed. The law also allows public officials the possibility of giving access to their tax declarations through the Secretariat of Federal Revenue. Failure to file a private interest disclosure or delaying its submission constitutes a disciplinary breach. The penalty for intentionally submitting an inaccurate disclosure includes administrative discipline with the possibility of dismissal and ineligibility for any position within the public administration for a period of up to five years (see Chapter 4.)

In Brazil, verification of the information contained with the private interest declarations for procurement and other public officials is the responsibility of the Office of the Comptroller General of the Union and the Federal Court of Accounts. Within the Office of the Comptroller General of the Union, the Secretariat for Corruption Prevention and Strategic Information verifies the disclosures based on a risk assessment and sampling of both public organisations and grade of officials. Organisations are selected based on materiality (both of expenditure and revenue) and number of issues raised in annual audit. Individuals are selected based on their decision-making powers (*i.e.* levels 3-6 supervisory and management officials) or if the official occupies a vulnerable position (*i.e.* officials in charge of procuring goods and services, overseeing the private sector or granting licenses). The current data-crossing has evolved since 2006 when the Office of the Comptroller General of the Union began examination of private interest disclosures. It has only been in the last year, however, that the Office of the Comptroller General of the Union has developed a more systematised search method.

In parallel, the federal government has taken action to prevent bid rigging and promote private sector standards

Since 2007, the Secretariat of Economic Law within the Federal Ministry of Justice has prioritised fighting bid rigging (OECD, 2010b). A special unit was established within the Secretariat with the aim of investigating bid rigging in public procurement and developing knowledge to help procurement authorities identify and avoid cartels in tenders. Bid rigging (or collusive tendering) occurs when suppliers that would otherwise be expected to compete secretly conspire to raise prices or lower the quality of goods, services or works for procurement authorities. These practices can take many forms, such as cover bidding, bid suppression, bid rotation and market allocation, all of which impede the procurement authorities. Often competitors agree in advance who will submit the winning bid on a contract to be awarded through a competitive process. This so-called bid rigging is an illegal practice in all OECD member countries and can be investigated and sanctioned under competition law and rules. In a number of OECD member countries, bid rigging is also a criminal offence.

Table 5.8. **Private interest disclosures for procurement officials in Brazil and select countries, 2010**

Country	Income		Assets	Liabilities	Gift	Outside positions		Previous employment
	Source	Amount				Paid	Unpaid	
Australia	o	o	o	o	o	o	o	o
Brazil	●	●	●	●	o	●	●	●
Canada	o	o	●	●	●	●	●	o
Chile	●	o	●	●	Prohibited	●	●	o
France	o	o	o	o	o	o	o	o
Germany	●	●	Prohibited	Prohibited	Prohibited	●	Prohibited	Prohibited
Japan	●	●	o	o	●[2]	●	●	o
Korea	●	●	●[3]	●	●[4]	●	●	●
Mexico	●	●	●	●	Prohhibited[5]	●	o	●
Spain	o	o	o	o	o	●	●	o
United Kingdom	o	o	o	o	o	Prohibited	o	o
United States	●	●	●[6]	●[7]	●	●	●	●

Notes: ● = yes, o = no

1. Brazil: gifts above BRL 100.

2. Japan: gifts above JPY 5 000.

3. Korea: assets/liabilities above KRW 10 million.

4. Korea: gifts above KRW 0.1 million.

5. Mexico: gifts above MXN 10.

6. United States: assets above USD 1 000 or USD 200.

7. United States: liabilities above USD 10 000.

Source: Adapted from OECD (2011), *Government at a Glance 2011*, OECD, Paris, doi: 10.1787/22214399.

The Secretariat of Economic Law Procurement Unit co-operates on actions to detect and sanction bid rigging with the Federal Ministry of Planning, Budget and Management, Office of the Comptroller General of the Union and Federal Court of Accounts. In 2009, co-operation between these organisations was institutionalised by the signing of an agreement for co-operation. This builds on previous agreements of co-operation with the Office of the Federal Public Prosecutor (2008), Department of Federal Police (2007) and public prosecutors in 23 Brazilian states and the Federal District. Together with the Federal Ministry of Planning, Budget and Management, the Secretariat of Economic Law has created a mechanism for online reporting of suspicious behaviour through Comprasnet ("click here to report a violation") by suppliers and citizens. The Secretariat of Economic Law, Office of the Comptroller General of the Union and Federal Court of Accounts have developed a typology concerning suspicious patterns applied to contracts that will be disseminated to public bodies to better detect and prosecute bid rigging in public procurement. The Secretariat of Economic Law uses the Public Spending Observatory, a data-matching and tracking system, to support investigations. Among OECD member countries, only Korea has developed such an approach to address bid rigging (OECD, 2010c).

The Secretariat of Economic Law has also established a Leniency Programme for suppliers participating in bid rigging. The Leniency Programme allows the Secretariat of Economic Law to enter into agreements with suppliers participating in bid rigging that

can, depending on the circumstances, either completely excuse the applicant from sanctions or reduce them by one- to two-thirds. In order to be considered for the leniency programme, suppliers must satisfy a number of conditions, including: *i)* be the first to denounce participation in a bid rigging cartel and not already be under investigation by the Secretariat of Economic Law; *ii)* not have been the leader of a bid rigging cartel, have ceased involvement in bid rigging and agree to fully co-operate with the investigation; and *iii)* provide evidence that identifies other participants in the bid rigging cartel. The degree to which a supplier is excused from sanctions for bid-rigging activities depends on whether Secretariat of Economic Law was previously aware of the alleged procurement cartel. Full immunity is available if the Secretariat of Economic Law had no knowledge of the illegal activity; partial leniency of up to two-thirds of the possible fine is available if the Secretariat of Economic Law did have such knowledge. If a fine is imposed, however, it may not be greater than the lowest fine imposed on any other cartel participant in the case.

Since 2007, there have been major efforts by the Secretariat of Economic Law to raise awareness of bid rigging and its illegality among public officials. The major objective of these outreach events has been to increase awareness about the harm from bid rigging as well as how to detect it. For example, in August 2008 approximately 200 public procurement officials from more than 40 federal public organisations participated in a major event in Brasília. Other events have targeted specific public organisations such as the Federal Ministry of Health and the National Agency for Terrestrial Transport. Specific training on bid rigging for procurement officials has also been developed in preparation for the 2014 World Cup and 2016 Olympic Games. In total, over 1 500 public officials participated in bid-rigging awareness raising events in 2009 and 2010 alone, although there is no structured data maintained by the Secretariat of Economic Law concerning participants in bid-rigging training activities (see Table 5.9).

Table 5.9. **Bid rigging training for public officials conducted by Secretariat of Economic Law, 2009-10**

Year	Location/event	Estimated participants
2009	OECD-Secretariat of Economic Law Road Show	450 procurement officials 150 investigators
2009	State of Rio de Janeiro	50 public prosecutors
2009	State of Espírito Santo	100 procurement officials
2009	N/A	35 heads of courts of accounts from all Brazilian states
2009	National Strategy for Cartel Prosecution (*Estratégia Nacional de Combate a Cartéis*)	200 investigators
2010	State of Minas Gerais	100 public prosecutors
2010	State of Rio Grande do Norte	70 public prosecutors
2010	N/A	30 heads of public prosecutors from all Brazilian states
2010	N/A	40 public prosecutors specialised in fighting criminal organisations
2010	N/A	35 representatives of the Brazilian "Control Network" (*Rede de Controle*) co-ordinated by the Federal Court of Auditors
2010	National Strategy for Cartel Prosecution (*Estratégia Nacional de Combate a Cartéis*)	200 investigators and auditors

Note: N/A = not available

Thousands of brochures, folders and other materials have also been distributed to procurement officials in order to increase awareness. In 2008, the Secretariat of Economic Law launched a brochure on preventing and fighting bid rigging designed especially for procurement authorities. It defines bid rigging, presents the main content of Brazil's anti-trust laws, explains what constitutes suspicious bidding patterns and how to contact the competition authority (including through the Secretariat of Economic Law e-tool "click here to report a violation"). It also presents some relevant tips on how to design procurement processes in order to enhance competition and minimise the risks of bid rigging. The training activities, brochure, folder and posters about fighting bid rigging draw extensively on the "OECD Guidelines for Fighting Bid Rigging in Public Procurement", including the Checklists for Detecting Bid Rigging in Public Procurement and for Designing the Public Procurement Process to Reduce the Risks of Bid Rigging. These materials are circulated to procurement authorities, the business community, courts, prosecutors, consumers and schools.

An increased number of bid-rigging cases has been observed by the Secretariat of Economic Law following its awareness-raising activities targeting procurement officials. Through the Secretariat of Economic Law's "click here to report" link on its website, the number of reports increased from 322 to 543 between 2008 and 2009. In 2008, 8% of reports concerned fraud in public procurement (*infrações em licitações*), including bid rigging. In 2009, the figures increased to 20% of reports concerning fraud in public procurement (*infrações em licitações*) and an additional 2% of reports specifically related to bid rigging (*carteis em licitações*). According to the Secretariat of Economic Law, the increase in reports was also accompanied by more consistent and better quality information.

Box 5.5. **Examples of big rigging in Brazil**

In October 2003, one of the members of a bid-rigging cartel involving security service provider companies with activities in Rio Grande do Sul applied to the Brazilian Leniency Programme. The target of the cartel was a number of public tenders organised primarily by the Secretariat of Federal Revenue's Regional Superintendendent in Rio Grande do Sul and Porto Alegre health municipal secretariat. In order to obtain full immunity from administrative fines and criminal sanctions, the leniency applicant submitted direct evidence of the bid rigging, including employees' testimonies and audio records of telephone conversations held between the leniency applicant's employees and the other cartel participants. The leniency applicant provided sufficient information to enable the Secretariat of Economic Law and the Office of Federal Public Prosecutor to run simultaneous dawn raids in four companies and two trade associations allegedly involved in the bid rigging. Approximately 80 people were involved in the dawn raids, including officials from the Department of Federal Police. Seized evidence showed that the defendants held weekly meetings to organise the outcomes of bids for public tenders.

After reviewing the Secretariat of Economic Law investigation and conclusion for the existence of a hard-core cartel, the Council for Economic Defence issued its decision in 2007. It imposed fines on 16 companies ranging from 15-20% of their 2002 gross turnover for bid rigging. Executives of the condemned companies and three industry associations were also found guilty of cartel offense and fined by the Council for Economic Defence. The total amount of fines imposed is in excess of BRL 40 million. In addition, the companies were prohibited from taking part in public procurement and engaging in contracts with financial institutions for a period of five years. Information on the case was published in a major newspaper in the state of Rio Grande do Sul at the expense of the convicted trade associations and labour union. At the same occasion, Council for Economic Defence recognised that the beneficiary of the leniency agreement fulfilled all the conditions imposed in the agreement with the Secretariat of Economic Law and, therefore, no sanctions were imposed.

Source: OECD (2010), "Collusion and Corruption in Public Procurement, Contribution from Brazil", DAF/COMP/GF/WD(2010)13, OECD, Paris.

Mandatory certificates of independent bid determination have been introduced to draw attention to the illegality of bid rigging and to support investigations

In 2009 the Secretariat of Economic Law issued Guidelines for the Analysis of Complaints Involving Public Procurement, together with a model certificate of independent bid determination.[20] The guidelines clarify Brazil's competition law with respect to public procurement, and also indicate the responsibility of the Secretariat to analyse cases of anti-competitive conduct by bidders, such as bid rigging. A certificate of independent bid determination requires bidders to provide written confirmation that their respective bids have been developed independently from their competitors and that no consultation, communication, contract, arrangement or understanding with any competitor has occurred.[21] These certificates are increasingly considered to play a critical role not only in facilitating investigation and prosecution of bid-rigging cases but also in raising awareness among bidders about the illegality of bid rigging.

Based on this Secretariat of Economic Law initiative, in September 2009 the Federal Ministry of Planning, Budget and Management published the Regulatory Instruction no. 2/2009 obliging bidders in federal public tenders to present a certificate of independent bid determination. Brazil's certificate of independent bid determination requires every bidder (or consortium) to sign a statement that it has not agreed with its

competitors about bids, disclosed bid prices or attempted to rig a public tender with a competitor (see Box 5.6). Certificates of independent bid determination, or equivalent legal clauses in bid submissions, are used in Australia, Canada, the United Kingdom and the United States.[22] While all of these countries allow procurement authorities to use certificates of independent bid determination, none of them make it mandatory. There have been select cases in which OECD member countries have made the use of these certificates mandatory. In the case of Canada, for example, the Vancouver Organising Committee for the 2010 Olympic Games included a "no collusion requirement", a variant of a certificate of independent bid determination, in all of its tenders. In 2009, a member of Brazil's National Congress presented Bill no. 5 506/2009 to amend Federal Law no. 8 666/1993 on Procurement and Administrative Contracts and make the signature of a certificate of independent bid determination mandatory at all levels of government (*i.e.* state, Federal District and municipalities). At the time of the finalisation of this chapter, the bill was still under analysis before the National Congress.

Box 5.6. **Brazil's certificate of independent bid determination template**

[Bid number]

Full identification of a representative of bidder as a duly constituted representative of the full identity of the bidder or the consortium, hereinafter bidder/consortium, for the purposes provided in item [complete] of file [complete] with identification of the procurement notice declare, under penalty of law, especially the Brazilian Criminal Code, Article 299, that:

- the proposal to join the bid ID was developed independently by the bidder/ consortium, and the contents of the proposal were not, in whole or in part, directly or indirectly informed, discussed or received any other potential participant of bid ID, or by any means by any person;
- the intention to submit the proposal prepared to participate in the bid ID has not been informed, discussed or received from any potential or actual participant's bid ID, or by any means by any person;
- did not attempt by any means or by any person, to influence the decision of any potential or actual participant's bid ID whether part of that bid or not;
- the content of the proposal to join the bid ID will not, in whole or in part, directly or indirectly communicated or discussed with any potential or actual participant's bid ID before the award of the object of that bid;
- the contents of the proposal to join the bid ID was not, in whole or in part, directly or indirectly informed, discussed or received from any member of another bidder/ consortium before the official opening of tenders; and
- that is fully aware of the contents and scope of this declaration and who has full power and information to steady it.

Legal representative of the bidder/consortium in the bidding, with full identification.

Source: Normative Instruction no. 2/2009.

Broad administrative and criminal sanctions exist to enforce poor performance and corruption by contractors

Federal Law no. 8 666/1993 on Procurement and Administrative Contracts provides for a number of administrative and criminal sanctions aimed at enhancing integrity and compliance of contractors with contracts.[23] The law establishes two types of conduct punishable by the imposition of administrative sanctions: *i)* unjustified delay in contract execution; and *ii)* total or partial lack of contract execution. The specifics of administrative sanctions are spelled out in tender documents or contracts. Primary responsibility for imposing administrative sanctions lies with the procurement authority. In addition, both the Office of the Comptroller General of the Union and the Federal Court of Accounts, as government audit authorities, may debar contractors. There are no statistics available on the number of sanctions by procurement authorities, nor for analysis of fines by public organisation or type of contract.

Unjustified delay in the execution of a contract may be sanctioned by periodic fines (*multa de mora*). Fines may also be deducted from the guarantee provided by contractors prior to commencing their work. Fines are paid directly to the Secretariat of the National Treasury. If the total amount due as periodic fines exceeds the amount of the guarantee, public organisations may deduct the outstanding value from other credits that the contractor may have with the federal public administration or, if necessary, initiate a judicial procedure to recover the amount of the fines. The imposition of periodic fines does not prevent federal public organisations from acting unilaterally to terminate a contract or from applying any other sanctions contemplated in law. There are no statistics on the amount of fines collected, nor for analysis of fines by public organisation or type of contract.

Total or partial lack of contract execution may be sanctioned by: *i)* written warnings; *ii)* fines (as a final sanction, not a periodic sanction); *iii)* temporary suspension from participation in tenders and ineligibility for administrative contracts for a period of up to two years; and *iv)* full debarment (*declaraçao de inidoneidade*) from tenders or ineligibility to compete for administrative contracts. Temporary suspension and debarment may also be applied to contractors who have: *i)* been found liable for tax fraud; *ii)* engaged in unlawful conduct aimed at thwarting the objectives of a tender procedure; or *iii)* demonstrated that they are unsuitable for administrative contracts with the public administration due to a prior offense. Temporary suspension and debarment may continue until the original reasons for the original sanctions no longer exist or until the contractor is re-instated by the procurement authority that issued the original sanctions.

Federal Law no. 8 666/1993 on Procurement and Administrative Contracts provides broad discretion to individual procurement authorities over the imposition of administrative sanctions. This is attributed to: *i)* a loose definition of administrative sanctions (*i.e.* the "total or partial lack of execution of the contract"); and *ii)* the absence of defining how different administrative sanctions are to be applied in practice (*e.g.* when will a certain breach of the contract obligations trigger a warning as opposed to a fine). Debarment may, however, only be adopted by a federal minister or state secretary following an administrative procedure where the contractor is entitled to present a defence. Debarred contractors may apply for re-instatement two years after the initial debarment decision. There are no statistics on the amount of fines collected, nor for analysis of fines by public organisation or type of contract.

Temporarily suspended and debarred contractors are entered into the National Registry of Ineligible and Suspended Contractors. Created in 2008 by the Office of the Comptroller General of the Union, this registry consolidates and disseminates information on sanctioned contractors from the various management systems of individual federal public organisations and states into a single, continuously updated database. Using the National Registry of Ineligible and Suspended Firms, public officials and citizens can search for suppliers online, by name, National Register of Legal Persons (*Cadastro Nacional Pessoa Jurídica*) or National Registry of Persons (*Cadastro de Pessoas Físicas*) numbers, or type of sanction. There are currently 1 343 sanctioned suppliers in the registry: 263 ineligible and 1 080 suspended. In addition to information from federal public organisations, the list also includes data from eight Brazilian states that have voluntarily provided this information to the Office of the Comptroller General of the Union.[24] The information remains the sole responsibility of the persons who supplied the information. As such, the Office of the Comptroller General of the Union places a disclaimer on the information noting that it is not liable for the accuracy or authenticity of information or for any direct or indirect damages resulting from them caused to third parties.

Table 5.10. **Data template of Brazil's National Registry of Ineligible and Suspended Contractors**

Company data Penalty data Sanctioning organisation			Information source Company data		Penalty data Sanctioning organisation		Information source Company data	
National Register of Legal Persons/ National Registry of Persons number	Company name	Type	Start date	National Register of Legal Persons/ National Registry of Persons number	Company name	Type	Start date	National Register of Legal Persons/ National Registry of Persons number

Source: Transparency Portal (n.d.), *www.portaldatransparencia.gov.br/ceis/index.asp*.

The effectiveness of the debarment system could be improved to include all suppliers and contractors debarred at various levels of government (*i.e.* federal, states and municipalities). At present and given the lack of publicity of most debarment decisions, the effect of debarment in a given state or municipality has limited effects beyond the borders of that state or municipality. Moreover, the current registry could be broadened to include not only contractors subject to administrative sanctions but also those found guilty of criminal conduct by a court.

In addition to administrative sanctions, Federal Law no. 8 666/1993 on Procurement and Administrative Contracts enumerates criminal sanctions for breaches in procurement procedures, often involving imprisonment. The criminal provisions of the law are broad in scope, covering both the procurement process and the management of administrative contracts. They apply to all public organisations and all levels of government (*i.e.* federal, state and municipal). Table 5.11 provides an overview of these criminal sanctions. Criminal sanctions may be coupled with the removal from office of an infringing public official. These penalties are increased by one-third where the infringing public official holds a position and functions of trust and gratifications (*cargos e funções de confiança e gratificações*). Fines are calculated as between 2-5% of the value of the tendered contract. The enforcement of the crimes listed in Federal Law no. 8 666/1993 is the responsibility of Office of the Federal Public Prosecutor. Anyone may trigger the intervention of the prosecutors by providing evidence in writing or orally (in the latter case with the

signature and support of two witnesses). Similarly, the Federal Court of Accounts and internal control authorities are required to forward any evidence of criminal behavior they may encounter in the exercise of their controlling functions to public prosecutors for further investigation.

Table 5.11. **Criminal sanctions in Brazil for breaches in procurement procedures**

Criminal sanction	Maximum penalty
1. Waiving or foregoing procurement in the cases laid down in the law or inobservance of requirements regarding exemptions; participating in this illegality and benefiting from the waiver or inobservance.	3 to 5 years imprisonment and fine
2. Preventing or defrauding through agreement, collusion or any other instrument the competitive nature of the bidding procedure in order to obtain, for themselves or for others, benefit from the award of the object of the bidding.	2 to 4 imprisonment years and fine
3. Sponsoring, directly or indirectly, a private interest before the administration, leading to the opening of a bid or the award of a contract which are subsequently annulled by the judiciary.	6 months to 2 years imprisonment and fine
4. Permitting, facilitating or creating any modification or advantage, including the extension of a contract in favor of the contractor, during the execution of a government contract, in the absence of authorisation by law, or in the bidding and contractual instruments; or paying bills in breach of the chronological order for payments; participating in these illegalities and benefiting from the contractual modification or extension.	2 to 4 years imprisonment and fine
5. Preventing, hindering or defrauding the performance of any action in the course of the bidding process.	6 months to 2 years imprisonment and fine
6. Breaching the confidentiality of a bidding proposal or giving others the possibility to do so.	2 to 3 years imprisonment and fine
7. Removing or attempting to remove a bidder from the process through violence, serious threat, fraud, or offering any kind of advantage.	2 to 4 years imprisonment and fine in addition to the penalty corresponding to violence
8. Defrauding, at the expense of the state Treasury, a procurement for the purchase or sale of goods or merchandise, or a resulting contract through the following actions: *i)* raising prices arbitrarily; *ii)* selling as legitimate counterfeited or damaged merchandise; *iii)* replacing agreed goods with a substitute; *iv)* altering the substance, quality or quantity of the delivered goods; and *v)* raising, by any means and in an unfair way, the costs associated with the proposal or execution of the contract.	3 to 6 years imprisonment and fine
9. Accepting the bid or entering into a contract with an ineligible firm; participating in a bid or contract while being ineligible.	6 months to 2 years imprisonment and fine
10. Unfairly impeding, obstructing or hindering the entry of any person in the procurement registries or unduly promoting the amendment, suspension or cancellation of an existing registration.	6 months to 2 years imprisonment and fine

Source: Federal Law no. 8 666/1993 on Procurement and Administrative Contracts.

Strengthening capability of the procurement system

Developing procurement managerial capability will be particularly important as Brazil advances in its pursuit of complementary procurement objectives. Experience from OECD member countries suggests that most waste in the procurement process, particularly of off-the-shelf goods and standardised services, is attributable to passive – rather than active – waste (*e.g.* Bandiera, Prat and Valletti, 2009). In other words, waste can be attributed to little knowledge and capability or incentives to minimise costs and maximise quality. Moreover, the most common barrier to implementing policies supporting complementary procurement objectives is recognised as a lack of know-how among procurement officials. The legal framework and political support are not considered serious barriers (OECD, 2007a; Weber, 2009).

Developing the procurement workforce through the development of core competencies and the provision of appropriate "how-to" practical tools

Empirical data on the size of Brazil's federal procurement workforce is limited. The Federal Ministry of Planning, Budget and Management – which has responsibility for both public procurement and human resource management policies – does not have information on the demographics of the current procurement workforce. This is in part because the procurement function is not guided by a dedicated career stream within the federal public administration. The 2004 World Bank Country Procurement Assessment Report of Brazil estimated that there were approximately 30 000 public officials working on public procurement on a full- or part-time basis among a total federal public administration workforce of approximately 300 000 (World Bank, 2004). The same report expressed concern over high staff turnover within the procurement function, citing virtually no attention to attracting and retaining qualified procurement officials within the federal public administration.

There is no comprehensive strategy for recruitment, development and retention of the procurement workforce in Brazil. Human resource management practices within Brazil's federal government tend to focus on compliance, with little room for competencies and performance. Attention centres on the responsibilities of a procurement committee, or an auctioneer in the case of reverse auctions, and their supporting staff. These challenges need to be taken into consideration in terms of an ageing workforce. Like many other OECD member countries, Brazil's federal public administration is ageing rapidly and much more rapidly than the wider labour market. The 2010 OECD Reviews of Human Resource Management in Government of Brazil noted that the federal government has not addressed the issues raised by an ageing workforce, such as levels of future recruitment and workforce planning (OECD, 2010g).

In order to improve capacity in public works procurement, in 2007 the federal government created the career group for infrastructure analyst and senior infrastructure specialist.[25] These positions are managed by the Federal Ministry of Planning, Budget and Management and distributed across federal ministries such as Transport, Energy and Mines, National Integration, Cities and Communications, etc. Initially, 216 infrastructure analyst and 84 senior infrastructure specialist positions were created. The number of positions for infrastructure analyst was subsequently increased to 8 000 in 2008. Prior to the establishment of this career, there were virtually no engineers in federal ministries. The decision continues the government's efforts since 2003 to develop capacity in infrastructure to support the Accelerated Growth Programme. Policies of the Cardoso administration in the area of infrastructure between 1996 and 2002 reduced the federal government capacity to perform activities related to infrastructure (*i.e.* planning, management, control and supervision). During this period, the number of active infrastructure officials fell from 7 048 to 4 510, a reduction of 36% of the total infrastructure workforce. By 2009, there were already 7 862 active public officials, a real growth of approximately 60% compared with 2002. This is combined with better-qualified public officials with the introduction of a minimum entry requirement of a bachelor's degree. About 65% of infrastructure officials currently have this educational level compared to only 27% in 2002 (OECD, 2010g).

In general, training and certification is narrowly focused on the functioning of the operating systems rather than the core technical and non-technical competencies procurement officials need to procure strategically and achieve value for money. Efforts are also being undertaken by the Secretariat for Logistics and Information

Technology to certify users of the Integrated General Service Administration System/Comprasnet. In 2008, 8 000 auctioneers and an additional 2 000 accounting staff were certified to use the system. A plan was to train a further 35 500 officials to use the systems in 2009, although less than one-third of this number (11 000 officials) was trained in 2009 by the Federal Ministry of Planning, Budget and Management. Competency management (*gestão por competências*) is in its infancy in Brazil and is being positioned as a core part of a strategy to strengthen the capability of the public service. It is being used as a way of re-orienting and strengthening training and development to upskill the public service and to instil a culture of ongoing development (OECD, 2010d). In developing a procurement competency framework, the Federal Ministry of Planning, Budget and Management is working to identify the abilities and behaviours procurement officials need to do their jobs well and linking a number of key human resource management activities (*e.g.* workforce planning and job design, training and professional development, progression and remuneration, etc.).

Examples of procurement competencies may include: strategy development and market analysis, risk management and contingency planning, measuring procurement performance, advanced project management, effective negotiation, communications and relationship management among others. In addition, the government may consider whether to define stand-alone competencies in order to support the government's pursuit of complementary procurement objectives or whether to consider them as integrated into general procurement competencies.

In the United Kingdom, the government of Scotland has developed a procurement competency framework to identify the skills and competency levels required by all officials involved in the procurement process. It also helps officials to take ownership of their personal development through skills assessment, identification of training and development needs and career planning. The framework consists of 13 competencies (8 technical and 5 non-technical), which form a broad set of vocational, operational and managerial skills required to perform successfully. Each competency is broken down into a number of component skills, of which there are 74 in total. These are set out in the form of a matrix that maps a range of skill levels from Level 0 (no knowledge or competence) through to Level 4 (highly skilled, thoroughly knowledgeable, total familiarity or highly experienced). In parallel, the professional association has mapped its professional qualifications in purchasing and supply. Table 5.12 provides an example of how this is done for procurement strategy development and market analysis.

Procurement officials need to be equipped with "how to" guidance materials and information to support the discretionary aspects of their work

The Secretariat for Logistics and Information Technology produces manuals focusing on how to operate the electronic systems to ensure that data is captured within the operating systems (and its supporting modules) as a means for supporting transparency and control; and on standard specifications for works. These manuals are all available on the Comprasnet website for procurement officials and the public alike. Federal Ministry of Planning, Budget and Management officials noted that where officials cannot find the answer to their queries in the various manuals available on Comprasnet, an additional two channels exist: *i)* frequently asked questions; and, if insufficient, *ii)* an email and telephone help desk operated by Secretariat for Logistics and Information Technology officials. As mentioned, in 2010, the Office of the Comptroller General of the Union issued a frequently asked questions publication to draw the attention of procurement officials to the relevant articles within Brazil's procurement legal framework.

Table 5.12. **Procurement Competency Framework – example of the Scottish Government Strategy Development and Market Analysis Competencies**

Goal: Has the strategy development and market analysis skills necessary to carry out duties associated with role.					
Skill	Level 0	Level 1	Level 2	Level 3	Level 4
Commodity-specific knowledge	Not required to have detailed and specific commodity knowledge. May have basic, limited experiential tactical/ operational knowledge of some specific commodities.	Aware of specific commodity features. Completes market research (or an element of), although still applies generic solutions.	Understands the specific nature of the commodity, either technically or commercially within their job remit. Carries out relevant market research. Adjusts strategy to relevant market conditions.	Knowledgeable of the specific aspects of a range of commodities/ services/estate works, both technically and commercially. Assesses appropriate strategies and tailors actions accordingly. Understands industry cost structures and pricing mechanisms.	Fully knowledgeable in a range of commodities/ services/estate works with past experience both technically and commercially. Develops robust strategies based on this knowledge, targeted to exploit market conditions. Fully cognisant of industry cost model, funding structure and corporate development, using information proactively. Recognised internally or externally as a source of market expertise.
Procurement -related strategy development	Not required to develop a procurement strategy, but may be involved in some tactical aspects.	Does not develop strategies, but may provide some input to others developing such strategies.	Understands the importance and principles of a strategic approach. May influence the development of strategies, for example may be a member of user intelligence groups. Able to identify the aim and objectives of lower value/less complex contracts.	Fully understands, can articulate and enact the principles of a strategic procurement approach. Can lead a User Intelligence Group in the development and implementation of strategies.	Extensive knowledge and experience of the processes relating to procurement strategy. Able to mentor and manage others.
Market analysis	Not required to understand markets or the concept of market analysis.	Aware of specific types of markets. Will initiate analysis when aware of market activity or when directed.	Understands how types of market and market activity affect supply and demand. Adjusts strategies according to market activity.	Knowledgeable about a range of markets and how they affect price, availability or supply chain logistics. Within their remit, will use specific market analysis to predict behaviour and supply risks to the organisation. Will adjust strategy to minimise effect of market change. May provide market analysis to customers and advice to others within procurement.	Fully knowledgeable regarding types of markets and a range of market activity. Will monitor key supply base to predict impact on organisation. Regularly displays sound judgement and minimises risk by prediction. Recognised internally or externally as a source of market expertise.

Source: Scottish Government (n.d.), "The Procurement Competency Framework", *www.scotland.gov.uk/Topics/Government/Procurement/Capability#a5*.

Existing procurement manuals are structured in relation to the procurement method rather than the competencies that procurement officials require. For example, manuals address the core operating systems (*e.g.* Integrated General Service Administration System), their supporting modules (*e.g.* Unified Registration System for Suppliers of the federal public administration) and application of the system for specific tender methods (*e.g.* reverse auctions). Neither the Secretariat for Logistics and Information Technology nor the Office of the Comptroller General of the Union provide "how to" guidance materials on the discretionary, more qualitative dimensions of procurement decision making. For example, how to conduct a procurement plan guiding procurement officials through what information could be collected, what sources could be used, how this could be verified to assess the needs of the organisation, along with templates to present the information in a user-friendly format. Other manuals could guide procurement officials as to how to conduct a market survey to understand the capabilities of suppliers and markets that they purchase from.

A procurement plan is a key management instrument in achieving organisational objectives and strategic goals. It supports identification of: *i)* the best way to approach the procurement of specific goods or services through information gathering and analysis; *ii)* possible risks associated with the purchase of goods or services at an early stage to allow optimum management (*e.g.* possibility of non-delivery or identifying wider range of suppliers); and *iii)* ways of achieving the objectives defined in the significant purchases plan, in line with the organisation's procurement plan. Plans are generally prepared on an annual basis and may include related budget planning, formulated on an annual or multi-annual basis (often as part of an organisation's investment plan), with a detailed and realistic description of financial and human resource requirements. Making procurement plans publicly available, such as through a central or procuring authority's website (see Figure 5.7) can also help to increase transparency, competition and value for money in public procurement.

At present the Secretariat for Logistics and Information Technology reports that procurement planning is done through the planning and budget cycle. While it is commonly recognised that procurement is part of public financial management, key differences exist between budget planning and procurement planning, especially for non-capital expenditure. For example, planning and budgeting establishes a resource envelope for a public organisation over the fiscal year but is not synonymous with planning the size of procurement packages and timing to approach the market. Significant time can pass between planning and formulation of the budget and its execution. Moreover, incremental budgeting (preparing the budget based on the previous year's budget) can further break down the relationship between budget planning and procurement planning. In this case, procurement planning will not reflect the changing circumstances in which the organisation or the supply market operates – nor any organisational learning from the previous year's contracts.

Figure 5.7. **Content and structure of a generic procurement plan**

Basic information:				
Stakeholders				
Name	*Secretariat/Department*		*Sign-off*	
Plan prepared by:				
Name	*Secretariat/Department*		*Sign-off*	
Names of others consulted				
Name		*Secretariat/Department*		
Requirement summary				
Areas of impact by this requirement				
Constraints				
Market analysis				
SWOT analysis: Procurement authorities perspective				
Strengths		*Weaknesses*		
Opportunities		*Threats*		
SWOT analysis: Suppliers perspective				
Strengths		*Weaknesses*		
Opportunities		*Threats*		
Knowledge gaps				
No.	*Knowledge gap*	*Information to fill the gap*		
1				
2				
…				
Risk management				
No.	*Risk description*	*Mitigating action:*	*Action by:*	*Timeframe:*
1				
2				
…				
Deliverables				
Strategy				
Action plan				
No.	*Action*		*Action by:*	*Timeframe:*
1.				
2.				
..				

Introducing performance assessment can help to evaluate value for money and integrity as a basis for evidence-based learning and improvement

In Brazil, a substantial pool of data is generated through procurement processes and collated in the Federal Ministry of Planning, Budget and Management's Integrated General Service Administration System "data warehouse". This information includes not only procurement conducted through the Comprasnet, i.e. electronic reverse auctions, but all procurement procedures conducted "offline". In the case of the latter, procurement officials must enter procedural and contract data into the Integrated General Service Administration System as a basis for contract management. This information is subsequently used by the Secretariat for Logistics and Information Technology to generate monthly and annual reports on public procurement. These reports are made publicly available on Comprasnet for suppliers and citizens to access. Reports include measures such as the number and value of contracts by modality (including bid waivers and exemptions), geographic region; supplier (i.e. micro, small and other; companies and individuals); and goods and services purchased (*i.e.* sector, economic classification of goods/services, common or specific goods/services).

The use of this information is largely confined to the Federal Ministry of Planning, Budget and Management. Senior officials from the Secretariat for Logistics and Information Technology note that decision makers and procurement officials from federal public organisations can be trained to use the Integrated General Service Administration System data warehouse in order to generate their own reports. However, discussions between the OECD Secretariat and procurement officials within the Secretariat of Federal Revenue, Federal Ministry of Health and Federal Ministry of Social Development and the Fight Against Hunger suggest that the take up, and even knowledge about this information, is low. Moreover, the current procurement measures focus solely on quantifying the number and value of procurement activities. The government does not have any indicators to monitor and evaluate the performance and quality of procurement procedures.

An increased interest in positioning public procurement more strategically within the operations of public organisations as a means of achieving value for money has led to a rise in evidence-based decision making in OECD member countries. Performance measurement is key for meeting these objectives. To be effective, the methodology and approach for performance monitoring must: *i)* be simple and practical; *ii)* take into account the realities of country systems and reflect the operational concerns of both the central procurement authorities and procurement officials; *iii)* be structured around key features and good practices of public sector procurement; and *iv)* use concepts, techniques and tools that are widely available and part of current practice in public sector management and quality management. Performance measurement should include attention to measuring processes and capability as a key component of understanding the functioning of the procurement system. Measurement should extend to all procurement modalities and all procuring authorities. OECD member countries have taken different approaches to assessing the state of their public procurement systems. These have included using key procurement indicators of processes (*e.g.* Chile), comprehensive procurement reviews (*e.g.* United Kingdom) and internal audit. Another emerging practice in countries is the use of applied procurement research as input for improving the performance of procurement systems (*e.g.* Australia and Canada).

In Chile, the Public Management Improvement Programme (*Programa de Mejoramiento de Gestión*) uses indicators to encourage improvement and establish rewards in procurement and other areas. Run by the Directorate of Budget within the Ministry of Finance, the programme measures, among other things, the rate of contracts made using emergency procedures, the value of contracts executed using competitive modalities, and the difference between annual plan and actual contracts made during the year.[26] By the end of 2003 some 131 public organisations had included procurement in their Public Management Improvement Programme plans and nearly all of them had achieved a higher quality level in the procurement function. These results can be partly explained by the efforts devoted to training for procurement officials, in which about 7 900 individuals were included until 2004, and by investments in information services.

Table 5.13. **Examples of procurement process performance indicators**

Indicator	Example of performance measure
Bid processing lead time	Average number of days from bid opening to the issuance of a contract award
Cancellation of tenders	Percentage of tenders declared null before contract signature
Resolution of reviews	Percentage of appeals resulting in modification in tender process
Contract amendment	Average increase per contract awarded
Contract dispute resolution	Percentage of contracts with unresolved disputes
Completion rate	Percentage of contracts resulting in full and acceptable performance
Late payment	Percentage of payments made late (*e.g.* exceeding contractually specified payment schedule)

Source: Adapted from OECD/World Bank (2005), "Methodology for Assessing Procurement Systems", OECD, Paris.

In the United Kingdom, the Office of Government Commerce launched in 2007 a series of Procurement Capability Reviews to support improvements in public procurement and service delivery. The reviews focus solely on commercial activity in central departments and examine three main elements of a department's procurement capability: *i)* leadership; *ii)* skills development and deployment; and *iii)* systems and processes. It includes an assessment of procurement activities across the whole lifecycle, from policy and strategy to delivery and disposal; the department's delivery chains are explored, from central departmental functions, through to agencies, non-departmental public bodies, partners and end users. The focus is on high-impact, large expenditure areas. Reviews combine both desk-based research and interviews with officials at various levels and in various functions from the organisation under review. Through the process, the review team identifies priority areas for improvement and provides feedback directly to the organisation's highest executive secretary. Each department develops and subsequently implements an Improvement Plan that is periodically monitored over a period of 6-24 months (see Box 5.7).

Drawing upon these examples, Brazil's Federal Ministry of Planning, Budget and Management may explore developing systems to measure the functioning and performance of its procurement systems. Procurement performance indicators at the level of individual public organisations might help public procurement officials and public managers to improve procurement performance over time. Indicators should be supported by a clear rationale, definition, methodology and data source. In parallel, it may conduct, together with federal public organisations, procurement capability assessments. These assessments can draw upon the results of key performance indicators and help identify good practices as input into operational procurement guidelines. Attention should

particularly focus on identifying concrete actions for improvement and periodically monitoring performance against these actions.

Box 5.7. **Procurement Capability Reviews in the United Kingdom**

The Procurement Capability Reviews were first announced in the Transforming Government Procurement in January 2007. It aims to ensure that procurement drives public service improvements supporting the Government's Smarter Government Agenda and Operational Efficiency Programme through the publication of transparent commercial performance data. The reviews focus solely on commercial activity in central departments and look in detail at three main elements of a department's procurement capability: leadership, skills development and deployment, and systems and processes. They include an assessment of procurement activities across the whole life cycle, from policy and strategy to delivery and disposal; the department's delivery chains are explored, from central departmental functions, through to agencies, non-departmental public bodies, partners and end users. The focus is on high-impact, large expenditure areas.

The reviews have been conducted in two waves each with several tranches. Sixteen departments were included in the first wave: the Department for Education and Skills, the Department for Communities and Local Government; the Department for Work and Pensions (Tranche 1); the Department for Transport; the Department for the Environment, Food and Rural Affairs; the Department for International Development (Tranche 2); the Department of Health; the Home Office; HM Revenue and Customs and the Ministry of Justice (Tranche 3); the Department of Defence; the Department for Culture, Media and Sport; the Foreign and Commonwealth Office; the Department for Business Enterprise and Regulatory Reform; HM Treasury and the Cabinet Office (Tranches 4 and 5). A second wave of reviews was conducted between September 2009 and September 2010. It is intended to review key procurement performance data and performance benchmarking on an annual basis to ensure momentum is maintained.

During several months' preparation, information about the department is gathered from a variety of sources. An intensive forensic stage follows, lasting three to four weeks. During this time members of the review team meet senior officials, officials in the central department, agencies and non-departmental public bodies involved in commercial activity, suppliers, and regulators – typically between 50 and 80 individuals. The review team members work on a number of lines of enquiry, "following the money" through the delivery chains. The results of departments' self assessments are published online. Each review team comprises an executive director of the Office of Government Commerce, an expert in public sector procurement and an experienced leader from the private sector. The depth and breadth of experience in each team ensures that it is able to reach a deep understanding of the commercial issues faced by the department, and that the department's board and procurement director have full confidence in the report and recommendations.

The review team identifies the priority areas for improvement and provides feedback directly to the Permanent Secretary. Their report sets out the general context within which commercial matters are addressed in the department, the performance against the nine indicators in the review model, and recommendations for action. The nine indicators reflect a number of smaller key performance indicators measuring procurement performance, including operational efficiency as well as wider procurement policy objectives such as sustainability. Based on the results of these key performance indicators, a score card is assembled against the nine indicators using a five-point red/amber/green scale. These scores are subsequently subject to a rigorous cross-tranche moderation process by an independent panel comprising representatives from the National Audit Office, Confederation of British Industry, HM Treasury and Cabinet Office Departmental Capability Review Programme.

Box 5.7. **Procurement Capability Reviews in the United Kingdom** *(cont'd)*

Each department is expected to develop and implement an Improvement Plan in response to the review, with support from the Office of Government Commerce. The Office of Government Commerce and the department will agree on an Engagement Plan, based on assessed risk to delivery against the approved Improvement Plan. Follow-up plans will include self-assessment by the department 6 months after the approval of the Improvement Plan; a stocktaking around 12 months after the first review to measure progress against the Improvement Plan; leading eventually to a follow-up full review within 24 months.

Source: Office of Government Commerce (n.d.), *www.ogc.gov.uk/ogc_-_transforming_government_procurement_procurement_capability_reviews.asp*.

Action is needed, in particular, to assess the functioning of Brazil's procurement review and remedies system as a tool for good procurement management

A procurement review and remedies system allow unsuccessful suppliers/bidders and, in certain instances, the general public, to challenge decisions taken by public authorities. The establishment of effective mechanisms to seek redress in cases where suppliers/bidders deem that contracts have been unfairly awarded or that other substantive or procedural rules have not been respected are essential to establishing trust with both the private sector and the general public. In addition, those mechanisms fulfil a number of objectives, including: *i)* ensuring compliance with procurement rules by serving as a deterrent to unlawful or irregular practices and correcting violations of the law and genuine mistakes by procurement officials; *ii)* identifying opportunities for management improvement in key areas of public procurement; and *iii)* fulfilling some of the substantive principles of public procurement, such as transparency, non-discrimination and equal treatment, and value for money (OECD, 2007d). Review and remedies systems vary significantly across OECD member countries some with specialised procurement review bodies (*e.g.* Canada, Germany and Korea) and alternative dispute settlement mechanisms (*e.g.* Australia, Canada, France, Italy, Mexico and the United Kingdom).

The procurement review and remedy system in Brazil is characterised by numerous administrative appeals and the frequent use of judicial review, which sometimes puts the entire process on hold for years. Appeals are reportedly often used by suppliers for the sole purpose of gaining advantage during the period of delay (*i.e.* providing sub-contracting arrangements for dismissing a complaint). This same issue was raised in the 2004 World Bank Country Procurement Assessment Report. Despite concerns about the high level of appeals and their impact on the procurement process, there is no structured data on the review and remedies within the federal public administration (*e.g.* caseload by channel of appeal, average time to resolve appeal, percentage of appeals unresolved, etc.) (World Bank, 2004). This is in part because of the multiple channels available to appeal procurement decision-making processes. Capturing information on procurement appeals and complaints is a first step to conducting a systemic audit of the review and remedies system. Such an audit is necessary to understand how the review and remedies system is used by suppliers and its impact on procurement processes. It is critical that the government better understand the issues facing the procurement review and remedies system to inform possible reforms in this area.

The main instrument to review procurement decisions and offer suppliers and citizens the possibility to contest such decisions set forth in Federal Law no. 8 666/1993 on

Procurement and Administrative Contracts is the formulation of administrative appeals and claims. It contemplates two main remedies against administrative decisions: *i)* a complaint (*impugnação*) alleging an irregularity in the procurement notice released by the procuring authority; and *ii)* an appeal (*recurso*) against subsequent administrative decisions available to bidders and contractors. Any citizen has the right to formulate a complaint (*impugnação*) by formalising a petition up to five working days prior to the date set for the opening of the qualification envelopes (*envelopes de habilitação*). The procuring authority must render a decision on the complaint within three working days. If the complaint is accepted, the procurement is suspended and may be published again with the necessary corrections. In the case of reverse auctions, a complaint must be brought to the procuring authority up to two days before the date set for the reception of the proposals. The complaint must be decided upon within 24 hours.

All administrative acts during the procurement process are subject to administrative review through appeal (*recurso*) to the respective procuring authority. The list of challengeable acts in Federal Law no. 8 666/1993 on Procurement and Administrative Contracts includes: *i)* the disqualification or qualification of bidders (*habilitação*, the most popular cause of administrative appeals); *ii)* the evaluation of proposals; *iii)* the cancellation of a bidding process; *iv)* the dismissal of a request for inclusion in a registry of contractors, as well as the modification or termination of such registration; *v)* the cancellation or suspension of the contract; and *vi)* the imposition of sanctions (warning, temporary suspension, or fine). All administrative appeals against the qualification or disqualification of bidders and the evaluation of proposals automatically suspend the procurement process until they are resolved. Other appeals only result in the procurement process being suspended if the competent authority invokes and substantiates a public interest (*razões de interesse público*) to take that decision.

Administrative appeals must be filed within five working days from the notification of the challenged act. They must be addressed to the procurement authority that took the decision being challenged, often the head of the procuring committee, who is obliged to notify all other bidders. All other bidders subsequently have five working days after their notification to challenge the appeal.[27] After five working days the head of the procuring committee may either reconsider the initial decision or transform the complaint into a fully fledged administrative appeal to be forwarded to a superior administrative authority (often the organisation's executive secretariat). This superior authority has another period of five working days to adopt a decision on the appeal, thereby putting an end to the administrative procedure.

In addition to appeals, dissatisfied bidders have two further review mechanisms: *i)* representation (*representação*); and *ii)* request for reconsideration (*pedido de reconsideração*). Representation is intended for situations where a regular appeal is unavailable. Request for reconsideration can be made against the decision of a federal minister or state secretary to blacklist a supplier from participating in a procurement procedure. Respective time limits of five working days and ten working days exist from the notification of the challenged decision (or two working days in both cases when using an invitation method).

Any disgruntled party can also contest a procurement decision with: *i)* the internal control authority of the federal public administration (*i.e.* the Office of the Comptroller General of the Union or an internal audit unit in the case of organisations of the indirect federal public administration such as agencies and foundations); *ii)* the Federal Court of Accounts (*i.e.* Brazil's supreme audit institution); *iii)* the Office of the Federal Public

Prosecutor; and/or *iv)* a federal court. In Brazil there is no obligation to have exhausted a prior administrative complaint or appeal directly with the relevant procuring authority before lodging a complaint with other federal authorities. Submitting a complaint or appeal to the procurement authority may offer clear advantages, especially in cases where a genuine and honest mistake, rather than a deliberate breach of procurement law is the reason for the dispute. This gives the procuring authority the chance to correct a genuine mistake. The supplier can also avoid confrontation with the procuring authority that can occur through judicial review. The effectiveness of a prior administrative appeal is ultimately dependent on the review culture of the procuring authority.

Procuring authorities are obliged to adopt the corrective measures that, based on their review of the case, may be proposed by internal audit authorities or the Federal Court of Accounts. In contrast with internal administrative appeals, the law does not set forth a timeframe for the review and resolution of complaints to the Federal Court of Accounts or internal audit authorities. In choosing between appealing to internal audit authorities and the Federal Court of Accounts, most complainants resort to the latter because of its broader powers. The Federal Court of Accounts has the possibility of adopting interim measures and suspending the procurement procedure or contract, as recognised by Federal Supreme Court case law. The Organic Law and Internal Regulation of the Federal Court of Accounts gives it the power to issue a deadline to the competent procuring authority to adopt certain measures (*e.g.* the annulment or modification of the procurement process, for instance). If the authority in question does not comply with these instructions, the Federal Court of Accounts may suspend the decision or inform the National Congress about the lack of compliance. In FY 2009 the Federal Court of Accounts ordered the suspension of 70 procurement procedures or contracts with an aggregate estimated value of BRL 830 million (USD 496 million; EUR 356 million) (TCU, 2009). In FY 2009, the Federal Court of Accounts ordered the annulment, suspension or modification of 31 bidding processes, compared to 45 in FY 2008 (TCU, 2010).

Federal Law no. 8 666/1993 on Procurement and Administrative Contracts also offers any supplier or citizen the possibility of filing a request with the Office of the Federal Public Prosecutor for the investigation of any crime committed in the course of the procurement process. Needless to say, the Office of the Public Prosecutor may also start a procedure on its own motion, *ex officio*, if it has indications that a crime has been committed. Finally, all disputes arising from a government contract, both during the procurement procedure and in the contract implementation, are subject to judicial review. A lawsuit may be brought in a court at any time in order to complain about a decision or act taken by a procurement official, public authority, etc; even at the same time as the administrative process. It is not necessary to wait for the end of the administrative process. In some instances, due to a judicial decision or injunction, an administrative procurement process must be suspended or terminated without reaching its end. As part of a brief to court, a complainant can request (and often obtain) an injunction (*medida liminar*) to suspend the procurement process until a final decision has been made. The limitations period for bringing a lawsuit against the federal public administration is five years.

Box 5.8. **Examples of recent Federal Court of Accounts instructions on public procurement procedures**

Decision no. 3046/Plenary/2008: in connection with a contract for the supply of administrative support, catering services and drivers for the Federal Ministry of Foreign Affairs, a bidder complained to the Federal Court of Accounts regarding the elimination of all proposals formulated in Excel format (as opposed to a Word document, which was required in the call for tenders) as well as the shortening of the period to bring an administrative appeal. The first decision had excluded many competitors who had presented lower bids. The Federal Court of Accounts asked the Federal Ministry of Foreign Affairs to initiate a new procurement process and imposed fines on the two officials responsible for the challenged decisions.

Decision no. 2816/Plenary/2009: in response to a complaint submitted by a bidder, the Federal Court of Accounts requested São Paulo's publicly-owned storage company (CEAGESP) to amend a bidding process due to irregularities in the call for tenders regarding the cleaning and maintenance of a storage facility. In particular, the Federal Court of Accounts concluded that the qualification criterion requiring bidders to be registered with a chemistry professional/industrial organisation was "abusive" and requested CEAGESP to check with the said organisation on the minimum requirements needed to perform the contract. The Federal Court of Accounts had already decided to temporarily suspend the tender process.

Conclusions and proposals for action

Brazil has recognised the role of procurement as a strategic instrument of public service delivery and an activity vulnerable to misconduct and waste. The federal public administration has taken steps to support development and to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making in order to support value for money, prevent waste in the allocation of resources and safeguard integrity. The federal procurement portal (Comprasnet), the electronic *Official Gazette of the Union*, the Transparency Portal of the Federal Public Administration, the Public Works Portal (Obrasnet) and approximately 400 transparency pages of individual public organisations provide access to information. In order to further enhance transparency in procurement, federal government of Brazil could consider the following proposals for action by the Federal Ministry of Planning, Budget and Management:

- Transparency could also be introduced in the pre-tender phase of the procurement cycle, for example through the preparation and publication of procurement plans by individual federal public organisations. Such information would help public organisations to leverage their buying power while allowing control and monitoring.
- Publish information on contract amendments above a certain amendment threshold on the federal Procurement Portal in order to further enhance transparency and direct social control. Such information can deter suppliers from submitting unrealistic prices and encourage more accountable contract management within public organisations.
- Integrate procurement information into one portal as a one-stop shop for suppliers and citizens. As part of this process, attention could focus on understanding the

use of the various procurement portals as a basis for evaluating the appropriateness of information and means in which it is made available.

Electronic reverse auctions have been promoted as a means to improve transparency, control and efficiency in procurement. Approximately 85% of off-the-shelf goods and common services are procured using electronic reverse auctions, yielding annual cost savings of approximately 23% for the federal government since FY 2002. Although contributing to a reduction in the number of exemptions to competitive procurement, exemptions and waivers remain high: 23% of contracts and 86% of contract values in FY 2009. In order to better understand the factors contributing to the use of exemptions, federal government of Brazil could consider the following proposal for action by the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Conduct a review of below-competition-threshold and emergency procurement as a basis for reviewing procurement guidelines and improving procurement practices. Such a review could also help shed light on whether use of exemptions stems from a lack of incentives for procurement planning and how planning could generate an additional efficiency dividend.

Automated back-office management systems support internal control activities, including separating procurement duties, embedding multi-level reviews and ensuring documentation of decision-making processes. New audit techniques and risk management are being introduced to create reasonable assurance of integrity in the procurement process. In order to strengthen internal control in procurement, federal government of Brazil could consider the following proposals for joint action for the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Devolve access to "red flags" identified by crossing procurement data with other government databases in order to place responsibility upon public procurement officials to conduct due diligence before contract award. Care, however, is necessary to ensure that red flags are properly vetted and employed. The flags identify atypical situations but are not a priori evidence of irregularities.
- Take forward plans to introduce risk management in federal public organisations, prioritising public organisations with a large share of the public administration's procurement spending and contracts. Introducing risk management in public procurement could serve as a critical entry point for introducing risk management more generally in some federal public organisations.
- Amend Federal Law no. 8 666/1993 on Public Procurement and Administrative Contracts to reduce discretion with regard to the imposition of administrative procurement sanctions. Procurement legislation does not determine how different administrative sanctions are to be applied in practice (*e.g.* when will a certain breach of the contract obligations trigger a warning as opposed to a fine) or standardised amounts for administrative fines.

While much has been achieved in terms of promoting transparency throughout the procurement cycle and introducing risk-based internal control, attention needs to focus on developing capability among procurement officials to support public organisations' service delivery and the government's strategic objectives. It will require transforming procurement into a strategic function rather than a simple administrative activity. In order to develop good procurement management practices in public organisations, federal

government of Brazil could consider the following proposals for joint action for the Federal Ministry of Planning, Budget and Management and the Office of the Comptroller General of the Union:

- Develop good practice manuals to enhance professionalism among public procurement officials. Good practices need not only originate from federal public organisations but also state and municipal public organisations as well as private organisations, in Brazil or overseas. Examples of issues that good practice guides may address include procurement planning, supplier engagement, etc.
- Develop procurement performance indicators at the level of individual public organisations to help public procurement officials and public managers improve procurement performance over time. Indicators should be supported by a clear rationale, definition, methodology and data source. Examples of key performance indicators may include number of appeals, time between bid opening and award, number of contract amendments, price increase, etc.
- Conduct, together with federal public organisations, procurement capability assessments. These assessments can draw upon the results of key performance indicators and help identify good practices as input into operational procurement guidelines. Attention should particularly focus on identifying concrete actions for improvement and periodically monitoring performance against these actions.
- Expand recording of information on procurement appeals and complaints as a first step to conducting a systemic audit of the review and remedies system. Such an audit is necessary to understand how the review and remedies system is used by suppliers and its impact on procurement processes. It is critical that the government better understand the issues facing the procurement review and remedies system to inform possible reforms in this area.

Notes

1. Active waste entails direct or indirect benefit for the public decision maker, i.e. reducing waste would reduce the utility of the decision maker. Passive waste, in contrast, does not benefit the decision maker. Passive waste can derive from a variety of sources: the public official does not possess the skills to minimise costs; the public official has no incentive to minimise costs; excessive regulatory burden may make public procurement cumbersome and increase the average price that a public organisation pays.

2. Public procurement is measured as intermediate consumption plus gross fixed capital formation. Gross fixed capital formation is the sum of investments made by government (acquisition of assets) less any fixed assets sold and thus, may slightly understate the size of investment-related procurements. It includes defence procurement. Figures differ from Eurostat estimates which include social transfers in kind. Social transfers in kind have been excluded because they represent only funded government expenditure and not public procurement.

3. See United Nations Convention Against Corruption, Article 9.1:

   "Each state party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective, *inter alia*, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, *inter alia*: *i)* the public distribution of information relating to procurement procedures and contracts (e.g. information on invitations to tender and relevant or pertinent information on the award of contracts, allowing suppliers sufficient time to prepare and submit their tenders); *ii)* the establishment, in advance, of conditions for participation (e.g. selection and award criteria and tendering rules) and their publication; *iii)* the use of objective and pre-determined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures; *iv)* an effective system of appeal to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed; and *v)* measures to regulate matters regarding officials responsible for procurement (e.g. private interest declaration in particular public procurements, screening procedures and training requirements).

   See Inter-American Convention Against Corruption, Article 3:

   "For the purposes set forth in Article II of this Convention [i.e. *i)* to promote and strengthen the development by each of the states parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and *ii)* to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance], the states parties agree to consider the applicability of measures within their own

institutional systems to create, maintain and strengthen…*v)* systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.

4. Conversion has been done using the exchange rate from 8/10/2010: BRL 1 = USD 0.5979; and BRL 1 = EUR 0.4294.

5. The Secretariat of Economic Law, more generally, is responsible for opening and conducting investigations related to anti-trust cases, as well as monitoring the market for anti-competitive practices within Brazil's Competition Policy System.

6. The contraction of public infrastructure procurement has been attributed to various causes including worsening conditions in international financial markets and decreasing real value of tariffs. This was reinforced by the deteriorating economic performance, and centralisation of state-owned enterprises operations and investment decisions, of state-owned enterprises attributed to a growing politicisation of the public administration. In addition, it has been noted that the 1988 Federal Constitution replaced infrastructure-specific federal taxes – on energy, transport and telecommunications – with non-specific state taxes without compensating with other sources; and reduced infrastructure spending by earmarking expenditure for education and health. Over time, federal public investment has been crowded out by rising current expenditure (World Bank, 2007; OECD, 2009b).

7. Reallocation for Accelerated Growth Programme projects may be up to 30% of budget appropriation compared to 12% for regular budget appropriations.

8. A public-private partnership in Brazil must have a contract value of more than BRL 20 million (USD 12.0 million; EUR 8.6 million), and provide a service for more than 5 years but not more than 35 years (including any extensions), for the design, construction, financing, operation and management of a capital asset and the delivery of a service using that asset to the government or citizens. It is distinguished from a public service concession (a "sponsored concession"), regulated by Federal Law no. 8 987/1995, by the absence of remuneration from the public to the private organisation. Federal Law no. 8 987/1995 defines a public service concession (*concessão de serviço público*) as a delegation of the provision of a public service made by a public entity, through a procurement carried out through the competition method, to a legal person or a firm consortium showing the capacity to perform on its own account and for a limited period of time. Federal Law no. 11 079/2004 defines a public-private partnership (*parcerias público-privadas*) as a contract regarding the provision of a service when the public administration is the direct or indirect user of the service, including those cases involving the execution of works or the supply and installation of goods.

9. The reference to "multiple" PPP projects is an important distinction to differentiate a dedicated PPP unit for government from a dedicated PPP project unit that may be located in government organisations to support the management of an individual project.

10. The legal basis for the differentiated treatment of micro- and small enterprises can be found in the 1988 Federal Constitution, Articles 146, 170, Item IX and 179. In order to implement these constitutional provisions, Federal Laws no. 9 841/1999 regarding Micro- and Small Enterprise). Federal Law no. 9 841/1999, Article 24, is limited to establishing guidelines for the differentiated treatment for micro- and small enterprises in public procurement, awaiting the regulation of the law. Nevertheless,

the regulation of the statute did not contain any provision in regard to this matter, causing the legal provision not to enter into force.

11. See Normative Instruction no. 1/2010; Federal Ministry of Planning, Budget and Management Decree no. 2/2010-SLTI/MP providing standard specifications for information technology goods within the direct federal public administration, autonomous agencies and foundations and other measures.

12. No data for the Czech Republic, Denmark, Iceland, Portugal, the Slovak Republic, Slovenia, Spain or the United States.

13. For example, Department of Enterprise, Trade and Employment (Ireland) 2009; OGC/Department for Innovation, Universities and Skills, 2006.

14. In relation to green public procurement see, e.g., OECD (2003a); OECD (2003b); OECD (2007c); and public procurement of innovation see for example, EC (2005); Elder and Georghiou (2007); Hommen and Rolfstam (2007); Uyarra and Flanagan (2010).

15. In 2006, 15 of Brazil's 26 states and the Federal District had their own e-procurement platforms, in addition to many large capitals and municipalities (de Almeida, 2006) – though their experiences vary considerably. Brazil's success has resulted in co-operation with a number of countries in Latin America, including Bolivia, Colombia, Nicaragua and Peru among others. Some Brazilian states have gone further, publishing information on public works such as Ceará (*http://cameras.gabgov.ce.gov.br/cameras*), Espírito Santo (*www.siges.es.gov.br/transparencia/projetos.aspx*) and Santa Catarina (*www.sicop.sc.gov.br/sicop*). In Santa Catarina, citizens can search using spatial maps each work performed in their state since 2000, including emergency works responding to the 2008 floods. More recent figures are not available.

16. The Unified Registry of Suppliers for the federal public administration is an electronic registry of suppliers that wishes to provide goods or services to administrative units with federal public organisations using a common streamlined registration process. While information on the Unified Register of Suppliers for the federal public administration is available online, applications must be submitted in person for verification that suppliers are current with their obligations to the Secretariat of Federal Revenue, the State Treasury, the National Social Security Institute and the Statutory Employee Pension Fund.

17. National Register of Legal Persons (*Cadastro Nacional Pessoa Jurídica*) or National Registry of Persons (*Cadastro de Pessoas Físicas*).

18. The Methodology for Mapping the Risks of Corruption (*Metodologia de Mapeamento de Riscos de Corrupção*) in partnership with Transparência Brasil (2006) can be accessed at *www.transparencia.org.br/docs/maparisco.pdf*.

19. See Federal Law no. 8 730/1993, establishing mandatory annual income and asset disclosures for positions and functions in the executive, legislative and judicial branches.

20. See Secretariat of Economic Law Ordinance no. 51/2009.

21. A certificate of independent bid determination is the more common term used. Some countries, such as the United States, use certificate of independent price determination. Some countries, such as Australia, use an access to contractor information contract clause rather than a certificate of independent bid determination.

Such clauses provide procuring and audit authorities with additional scope for their respective accountability and control functions that can be used in exceptional circumstances.

22. See also OECD (2010e) for Canada; OECD (2010f) for the United Kingdom; OECD (2010g) for the United States. In the United States many procurement officials use certificates of independent bid determination of their own accord.

23. In fact Federal Law no. 8 666/1993 on Public Procurement and Administrative Contracts, devotes an entire chapter to administrative sanctions, see Articles 81-108.

24. These states are Bahia, Espírito Santo, Goiás, Minas Gerais, Pernambuco, Sergipe, São Paulo and Tocantins.

25. See Provisional Measure no. 389/2007, transformed into Federal Law no. 11 539/2007 creating a career for infrastructure analysts and specialist infrastructure specialists.

26. Public procurement is identified as one issue in the programme in addition to human resources, customer assistance, planning and implementation, internal audit, financial management and quality of service. See OECD (2007b).

27. This five-day period for contesting appeals and rendering a decision by the procurement authority becomes three and two days, respectively, in the case of reverse auction and invitation methods.

Annex 5.A1

OECD Principles for Integrity in Public Procurement

The *OECD Principles for Integrity in Public Procurement* aim to guide policy makers, at both central and sub-central levels of government, in instilling a culture of integrity throughout the entire procurement cycle: from needs assessment to contract management and payment. They emphasise: *i)* promoting transparency throughout the procurement cycle to ensure a level playing field and promote direct social control; *ii)* developing procurement capabilities to improve the quality of public services (more value) and efficiency (less money); *iii)* preventing misconduct and waste in order to safeguard public funds and protect it from undue influence; and *iv)* establishing mechanisms for accountability and control to ensure compliance and deter unlawful and irregular conduct.

The principles reflect the multi-disciplinary work of the OECD in analysing public procurement from the public governance, aid effectiveness, anti-bribery and competition perspective. They build on the OECD methodology such as the Development Assistance Committee's Methodology for assessment of national procurement systems and the Working Group on Bribery's typology of bribery in public procurement.

Transparency

1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for suppliers/bidders.
2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

Good management

3. Ensure that public funds are used in procurement according to the purposes intended.
4. Ensure that procurement practitioners meet high professional standards of knowledge, skills and integrity.

Prevention of misconduct

5. Put mechanisms in place to prevent risks to integrity in public procurement.
6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Provide specific mechanisms to monitor public procurement as well as detect misconduct and apply sanctions accordingly.

Accountability and control

8. Establish a clear chain of responsibility together with effective control mechanisms.
9. Handle complaints from suppliers/bidders in a fair and timely manner.
10. Empower civil society organisations, media and the wider public to scrutinise public procurement.

Annex 5.A2

Efforts to enhance integrity for the Brazil's 2014 World Cup and 2016 Olympic Games

Brazil is host of the 2014 FIFA World Cup and the 2016 Olympic Games. Both events involve significant amounts of public and private resources. More than BRL 17.0 billion (USD 12.2 billion; EUR 7.3 billion) in investments has already been allocated for the 2014 World Cup, of which BRL 11.4 billion (USD 6.4 billion; EUR 4.9 billion) will be earmarked for urban mobility and BRL 5.7 billion (USD 3.4 billion; EUR 2.4 billion) for stadiums. According to the Rio 2016 Bid Dossier, a total of over BRL 12.5 billion (USD 7.5 billion; EUR 5.4 billion) will be spent on investments relating to the Olympic Games, with public funds covering 95% of that amount.

Transparency, control and accountability are being reinforced…

The federal government of Brazil has set up governance structures for both mega-sporting events. In January 2010, a steering committee was established to define, approve and supervise the Strategic Plan of Actions for the 2014 FIFA World Cup (see Federal Decree no. 14/2010). It includes representatives from 21 federal public organisations and is headed by an Executive Group comprising of the Civil House of the Office of the President of the Republic and the Federal Ministries of Sport, Finance, Planning, Budget and Management and Tourism. Similarly, in May 2010, the federal government, and the state and governments of Rio de Janeiro created the Olympic Public Authority (*Autoridade Pública Olímpica*) to co-ordinate all actions and works required for the 2016 Olympic Games. The head of the authority is appointed by the President of the Republic with confirmation by the Federal Senate.

In May 2010, the Federal Minister for Transparency and Control established obligations for federal public organisations to provide detailed information on their activities relating to the two mega-sporting events. This also applies to the National Bank for Economic and Social Development and the Federal Saving Bank that are expected to finance some of the projects. Commencing in 2011, the Office of the Comptroller General of the Union's audit planning matrix includes specific attention on activities related to the 2014 FIFA World Cup and the 2016 Olympic Games. It also currently publishes expenditure estimates, and will provide real-time information on expenditure disbursements, through dedicated transparency portals for 2014 World Cup and 2016 Olympic Games (see *www.portaldatransparencia.gov.br/copa2014* and *www.portaldatransparencia.gov.br/rio2016*, respectively).

In May 2010, the Federal Court of Accounts presented its audit model to oversee expenditures related to the 2014 FIFA World Cup. It has also signed a protocol with state and municipal courts of audit in areas that will host cup matches defining their respective roles and provides for information sharing. To promote transparency and accountability, the Federal Court of Accounts has created a website to monitor the preparations for this

international event as well as to publish the Federal Court of Accounts audits of the different projects involved (*www.fiscalizacopa2014.gov.br*). These activities are closely co-ordinated with the National Congress Permanent Subcommittee on Monitoring of Federal Public Funding for the 2014 FIFA World Cup.

…but the government must remain vigilant in managing operational risks

In July 2010, a Federal Court of Accounts report identified a number of major risks associated with the 2014 World Cup. Its findings include: *i)* significant problems regarding co-ordination by the Federal Ministry of Sports related to the construction or refurbishing of stadia and airport infrastructure; *ii)* insufficient human capacity to analyse the different projects from a technical and engineering standpoint within the financing organisation (*e.g.* the National Bank for Economic and Social Development); and *iii)* unrealistic deadlines raising the risk that projects will be procured before each is clearly defined and using emergency procurement procedures and increasing costs. The Federal Court of Accounts also identified a stadium where a random sample of materials used in the construction showed a 46% price premium.

In view of significant delays in the construction of key infrastructure for both mega-sporting events, the 2011 Budget Guidelines Law approved by the National Congress in July 2010 (Federal Law no. 12 309/2010) exempts works relating to the 2014 FIFA World Cup and 2016 summer Olympic Games from the use of public procurement rules (*i.e.* Federal Law no. 8 666/1993).

Annex 5.A3

Exemptions to competitive procedures under the Federal Law no. 8 666/1993 on Procurement and Administrative Contracts

Federal Law no. 8 666/1993 outlines the exemptions to competitive tender. The list has been amended 6 times since 1993 (see Federal Laws no. 8 883/1994; no. 9 648/1998; no. 10 973/2004; no. 11 107/2005; no. 11 445/2007; and no. 11 484/2007). In total there are 28 provisions outlining exemptions to competitive procedures including

- For works and engineering services worth up to 10% of invitation threshold, provided they refer to parts of the same work or service or for works and services of the same nature and at the same place that they can be held jointly and simultaneously (as amended by Federal Law no. 8 883/1994). This percentage is increased to 20% for state-owned enterprises, mixed-capital enterprises and foundations (as amended by Federal Law no. 11 107/2005).
- For other goods and services worth up to 10% of invitation threshold, each step or series of stages of work, service or purchase, there are separate bids to match, preserved the appropriate modality for the implementation of the object in bid (as amended by Federal Law no. 8 883/1994). This percentage is increased to 20% for state-owned enterprises, mixed-capital enterprises and foundations (as amended by Federal Law no. 11 107/2005).
- In case of war or serious civil disturbance.
- In cases of emergency or public calamity, that may cause injury or endanger the safety of people, works, services, equipment and other property, public or private. This applies only for goods necessary to meet the emergency situation and portions of works and services that can be completed within a maximum of 180 consecutive calendar days after an emergency or disaster. It prohibits contract extension.
- When no bids have been submitted previously and the tendering cannot be repeated without prejudice to the administration: in this case all the pre-established conditions must be maintained.
- When the federal government must intervene in the economy to regulate prices or normalise supply.
- When the bids that have been submitted carry prices manifestly higher than those prevailing on the national market, or are incompatible with those fixed by the competent official authorities, in which cases and if the situation persists, the goods or services may be awarded directly, for a value not exceeding that in the price or services registry
- For procurement, by legal persons under domestic public law, of goods produced or services provided by public organisation that has been created for this specific

purpose at a time prior to the enactment of the Federal Law of Public Procurement and Administrative Contract, provided that the price contract is consistent with the market price (as amended by Federal Law no. 8 883/1994).

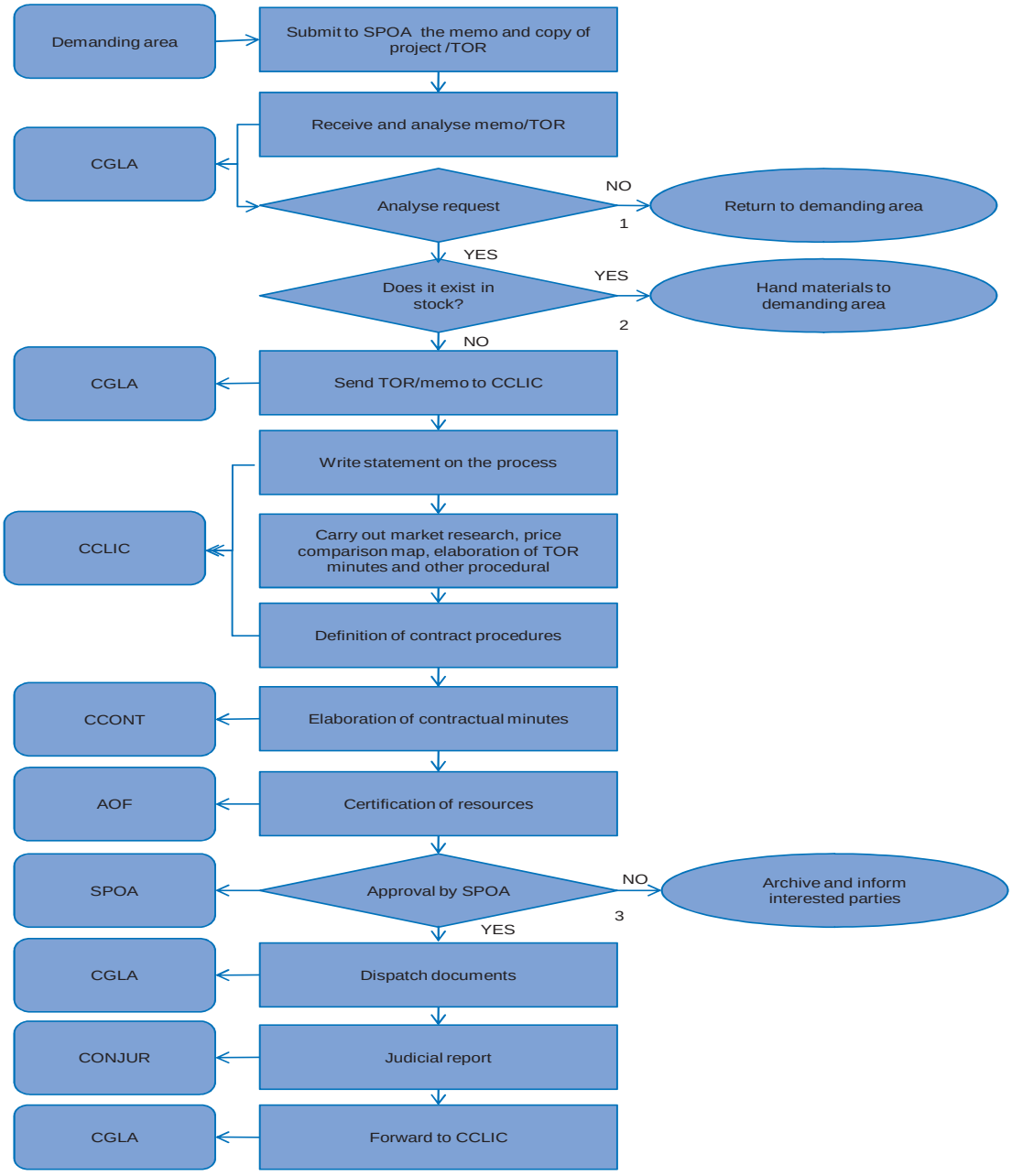
- When there is a risk that national security may be compromised, in cases established by presidential decree, after consultation with the National Defence Council.
- For the purchase or lease of buildings or property to meet the essential needs of the administration, where the choice is conditioned by installation and location, provided the price is compatible with market value, as previously appraised (as amended by Federal Law no. 8 883/1994).
- In the procurement of remaining works, services or supply as a result of as contractual termination, observing the order of the previous bidding and accepting the same conditions offered by the winning bidder, including as to price, due corrected.
- In the procurement of fresh produce, bread and other perishable commodities, in the time necessary to conduct the corresponding bidding process, carried out at the base of the day (as amended by Federal Law no. 8 883/1994).
- In contracting a Brazilian research, educational or institutional development organisation recognised by the regulation or statute, or an organisation devoted to the social rehabilitation of prisoners, provided the organisation maintains a sound integrity and professional reputation and is not for profit (as amended by Federal Law no. 8 883/1994).
- For the procurement of goods or services under a specific international agreement approved by the National Congress, when the conditions offered are clearly advantageous to the government (as amended by Federal Law no. 8 883/1994).
- For the procurement or restoration of works of art and historical objects of certified authenticity, provided they are compatible or inherent to the purpose of the public organisation.
- For printing the official *Gazettes*, standardised administrative forms and official technical publications, and for the provision of computer services to a legal person under public law, by public organisations of the public administration created specifically for purpose (introduced by Federal Law no. 8 883/1994).
- For the procurement of domestic or foreign components or parts of for maintenance of equipment during a technical warranty period, from the original supplier of the equipment, when such exclusivity is essential for maintaining the warranty (introduced by Federal Law no. 8 883/1994).
- In the procurement or contracting of services for the supply of ships, aircraft or troops and their means of transportation, on short-term layover in ports, airports or other locations of their headquarters, for reasons of operational movement or training, and when the observance of legal time limits could compromise the functioning and purpose of the operations, and provided its value does not exceed the limit provided by the invitation threshold for goods and services.(introduced by Federal Law no. 8 883/1994).
- For purchasing material for use in armed forces, with the exception of materials for personal and administrative matters, when there is a need to maintain the standardisation required by the logistical support structures of naval, air and land

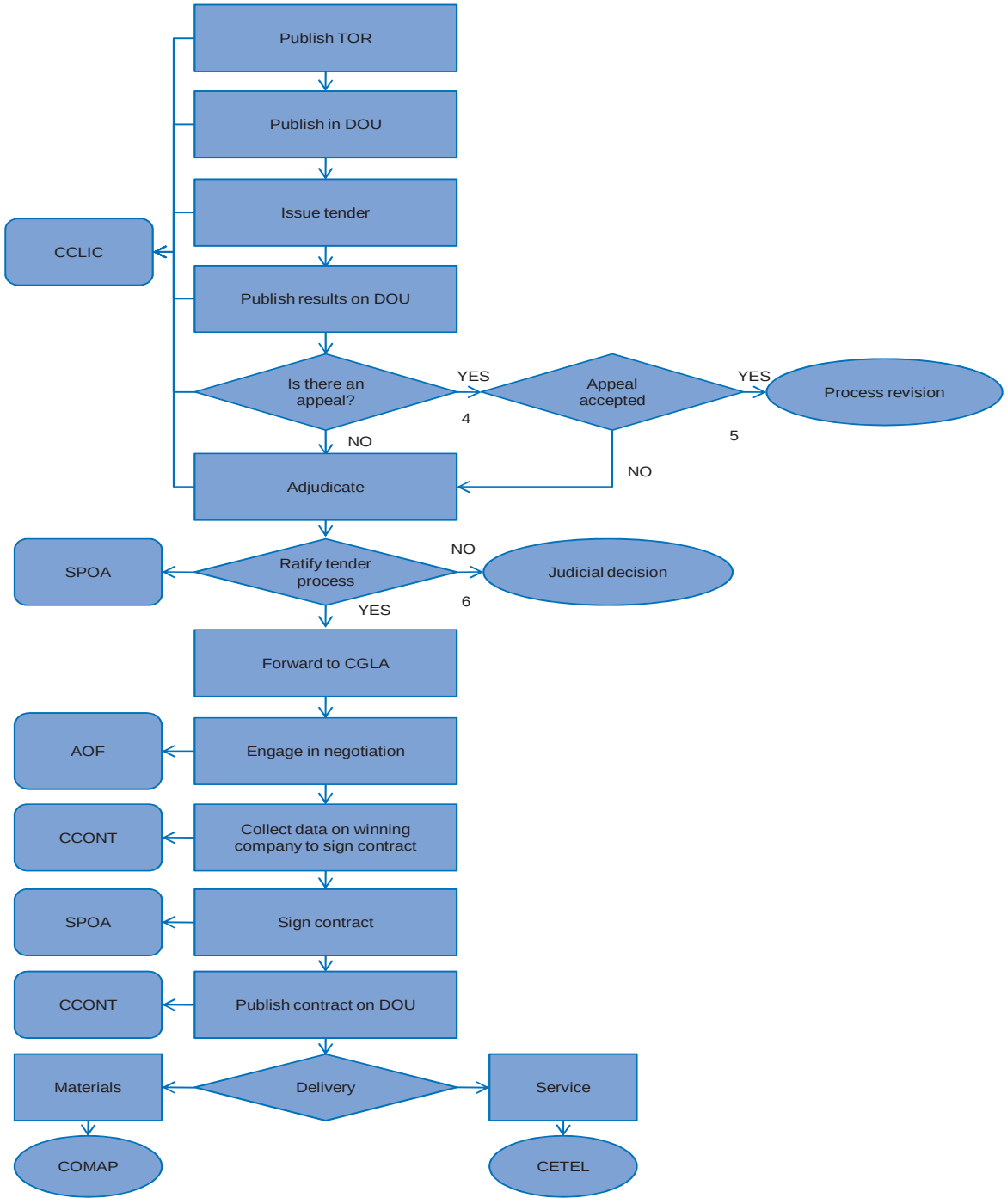
facilities, consistent with the opinion of a commission instituted by decree (introduced by Federal Law no. 8 883/1994).

- In contracting with a non-profit and demonstrably suitable association of disabled persons by public organisations to provide services or supply of manpower, provided that the contracted price is consistent with the market prices (introduced by Federal Law no. 8 883/1994).
- For the procurement of goods intended exclusively for scientific and technological research with funding from the Co-ordination of Improvement of Higher Education Personnel (*Coordenação de Aperfeiçoamento de Pessoal de Nível*), the Brazilian Innovation Agency (*Financiadora de Estudos e Projetos*), the National Council for Scientific and Technological Development (*Conselho Nacional de Desenvolvimento Científico e Tecnológico*) or other research institutions accredited by the National Council for Scientific and Technological Development for this specific purpose (introduced by Federal Law no. 9 648/1998).
- For the contracting of supply or delivery of electric energy and natural gas with a concessionaire, permit holder or other licensed organisation, in accordance with existing legislation (introduced by Federal Law no. 9 648/1998).
- For procurement done by a public or mixed-capital enterprise with their controlled subsidiaries, for the purchase or disposal of goods or services, provided that the contract price is compatible with market prices (introduced by Federal Law no. 9 648/1998).
- For the procurement of services with social organisations, qualified in their respective spheres of government, for activities covered by management contract (introduced by Federal Law no. 9 648/1998).
- For contracts involving research organisations fostering technology transfer or licensing of the intellectual property (introduced by Federal Law no. 10 973/2004).
- In the negotiation of programme contracts with a public organisation at a federal, state or municipal level for the joint provision of public services under terms authorised in a public consortium contract or co-operation agreement (introduced by Federal Law no. 11 107/2005).
- In contracting the collection, processing and marketing of recyclable or reusable urban solid waste, in areas with a garbage collection system arranged by associations or co-operatives formed exclusively by low-income individuals recognised by government, with the use of equipment compatible with technical, environmental and public health standards (amended by Federal Law no. 11 445/2007).
- For the supply of goods and services produced or rendered in the country that involve, cumulatively, high technological complexity and national defence aspects, on the advice of a committee appointed by the highest authority of the court (introduced by Federal Law no. 11 484/2007).

Annex 5.A4

Procurement risk map of the Federal Ministry of Social Development and the Fight against Hunger (2006)





Notes:

AOF: Sub-secretariat of Planning and Budget (*Subsecretaria de Planejamento e Orçamento*); CCLIC: Co-ordination of Procurement and Tendering (*Coordenação de Compras e Licitações*); CETEL: Co-ordination of Engineering and Telecommunications (*Coordenação de Engenharia e Telecomunicações*); CGLA: General Co-ordination on Logistics and Administration (*Coordenação-Geral de Logística e Administração*); COMAP: Co-ordination of Material and Assets (*Coordenação de Material e Patrimônio*); SPOA: Sub-secretariat of Planning, Organisation and Administration (*Subsecretaria de Planejamento, Orçamento e Administração*).

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Chapter 2. Promoting transparency and citizen engagement
Chapter 3. Implementing a risk-based approach to internal control
Chapter 4. Embedding high standards of conduct
Chapter 5. Enhancing integrity in public procurement
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