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**Governance in Brazilian Federal Regulatory Agencies: An Analysis From Court
of Accounts Basic Governance Framework**

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ABSTRACT

In the 1990s, Brazil experienced a time when several public companies operating in sectors such as telecommunications and electric power were transferred to the private sector, which was accompanied by the creation of several Federal Regulatory Agencies. The creation of Regulatory Agencies aims the intervention of the State in the economy. Its basic design was guided by the creation of entities inserted in the indirect public administration, endowed with administrative independence and financial autonomy. The point in common among these Regulatory Agencies is the concern for the quality of services in the regulated sector, characterized into improved regulatory governance from the distancing of central government. Given the relevance of the social and economic impact of the actions developed by these Regulatory Agencies, it is expected that these institutions will present a level of adequacy to the Basic Governance Framework of the Brazilian Court of Accounts, consistent with the extent of its attributions. Faced with this expectation, the following question arises: what is the level of governance in Regulatory Agencies, according to what the Governance Framework prescribes? The objective of the paper is try to offer an answer to this question, investigating the level of adequacy of these institutions to the Governance Framework. Based on the dichotomous model of Costa et al (2014), a model was constructed to identify Governance Index of Regulatory Agencies. The data was obtained from the websites of these institutions or through e-SIC Portal. The results evidenced the need of these institutions to implement actions aimed at improving their levels of governance, especially regarding the mechanisms of Leadership and Control.

Keywords: Governance; Regulation; Agencies; Fitting; Court of Accounts.

INTRODUCTION

The creation of regulatory agencies has as an aiming the intervention of the State in the economy. In this sense, Mattos (2004) affirms that many theories have been developed to explain the observed pattern of state regulation of economics, which include the "public interest" theory, the "group of interests" theory and the "capture" theory.

The basic structural design of regulatory agencies was guided by the creation of municipalities, entities of indirect public administration, with administrative independence and financial autonomy, whose leaders are not subordinated to the central power and have a fixed and stable mandate (BINENBOJM, 2005).

The point in common between these regulatory agencies is the zeal for the quality of services to the regulated sector, translated into the improvement of regulatory governance from the distancing of the central power in the intervention of markets (PIRES and GOLDSTEIN, 2001). In this context, it's expected that the model of the creation of the agencies contribute to these institutions having favorable conditions for the maturation of their governance, a requirement that is one of the essential elements to legitimize the role played by such entities.

Given the relevance of the social and economic impact of the actions developed by the regulatory agencies, it is expected that these institutions will present a level of compliance with TCU's Referential Basic Governance (BRASIL, 2014), consistent with the scope of its attributions. It is therefore imperative that these institutions have a permanent dialogue with the various *stakeholders*, such as companies, investors, civil society and all the people that orbit around the activities of the agencies, impacting their actions or being influenced by them.

Faced with the expectation of these *stakeholders*, regarding the way the regulatory agencies operate, the following question arises: what is the level of governance in regulatory agencies, according to what is prescribed by the Referential of the Federal Court of Accounts? Limiting the object of the research to the Brazilian federal regulatory agencies, we seeks to answer this question, so that the general

objective of the study is to investigate the level of adequacy of these municipalities to the TCU's Referential Basic Governance (BRASIL, 2014).

In order to do so, the three basic mechanisms of governance will be taken according to TCU's referential Basic Governance (BRASIL, 2014), comprised in leadership, strategy, and control, to investigate the adequacy of regulatory agencies to these mechanisms, in compliance with its components. We will use the model of Costa *et al* (2014), which will be renamed exclusively for the purpose of this work as a governance index model.

A dichotomous variable will be used in each component of the governance mechanisms, through the attribution of punctuation (1 or 0) depending on the agency's observance (or not) of the agencies characteristic of governance listed as wished. The data will be obtained through the websites of the analyzed agencies.

The research reveals the importance given to the prominent role that regulatory agencies have in Brazil, especially in the context of the privatization process perpetrated in the 1990s. Besides that, the results to be found will be added to the literature on the subject, under the approach of fulfilling institutional role of these agencies.

We believe that a study that seeks to investigate the level of governance of federal regulatory agencies can contribute to increasing discussions about the way these institutions operate and foster debates about the advance and improvement of the Brazilian regulatory process.

THEORETICAL REFERENCE

THE BRAZILIAN REGULATORY AGENCIES

In the 1990s, Brazil experienced a time when several companies that operate in sectors such as telecommunications and electricity were transferred to the private sector, which was accompanied by the creation of several federal regulatory agencies. In order to enable such entities to act with the necessary autonomy to a good performance to their functions, the status of special municipalities was

conferred to them, whose main characteristics are financial and administrative autonomy.

In this sense, Peci and Cavalcanti (2000) emphasize that the recent transformations resulting from the deregulation and privatization processes have strongly redefined the role of the Brazilian State, making it (the State) seek to strengthen its role in the regulatory sphere.

In Smith's (1997) and Barroso's (2002) conception, it was sought to guarantee the agencies a design that would allow the insulation of their decisions with respect to political or private pressures, thereby encouraging technical decisions.

Over the years, the technical staff of the agencies, the specialized knowledge of these agencies and the emptying of the ministries contributed to concentrate the process of formulation and implementation of regulatory policies in the agencies, opening space for questioning the model (Melo, 2002; MARTINS, 2004; PECCI, 2007).

Regarding the role of regulation, Baldwin (2012) clarifies that regulation is the action of the State that has as similarity the limitation of the degrees of freedom of private agents through decision making processes.

Regarding the control of regulatory agencies, Barbosa (2011) affirms that international experience shows that the strongest mechanism of control on these entities corresponds to social control, played through popular participation in the decision making procedures of regulatory agencies. What also is seen as one of the main legitimating mechanisms of the agencies, contributing to the control of the legality and effectiveness of the administrative acts of their competence, since they provide greater equity and efficiency to decisions.

REGULATORY GOVERNANCE

According to Matias-Pereira (2010), the term governance emerges in reference to *good government* and in the State's competence of consciously execute public policies. In the same sense, Oliveira (2015) reports that the concept of "good

governance" includes the ideals of specialization, depoliticization, efficiency, legitimacy, transparency, and *accountability* of state action.

The institutional model of the creation to Brazilian regulatory agencies had the purpose of allowing such entities to act with the necessary autonomy to the good performance of their functions. However, Silva (2013) points out that there are intense debate and criticism of the model and role of regulatory agencies in Brazil. It is possible to note the renewal of the reform agenda, focused on the need for adjustments in the new governance model adopted in the regulatory system with a focus on improving and advancing the quality of regulation in Brazil.

In the context of discussions about the role played by regulatory agencies and the need for improvement in the Brazilian regulatory process, the concept of Regulatory Governance is given birth. According to Barbosa (2011), we understood as the rules and practices that govern the regulatory process, the systematic interaction between the actors involved and the institutional design, in which the Regulatory Agencies are inserted, as well as the means and instruments used by regulators in favor of an efficient, transparent and legitimate regulation.

For Correa *et al* (2008), the impact of regulation on the economic performance of the regulated sectors depends fundamentally on the adequacy of the design of the structure and process of regulatory agencies, which translates into regulatory governance. In Santos' view (2012), regulatory governance offers mechanisms able to curb the discretionary actions of regulators and guarantee legal certainty and credibility to attract investments.

According to IFAC (2014), the fundamental function of good governance in the public sector is to ensure that entities achieve the pretended results, always in the interests of society. The TCU's Referential Basic (BRASIL, 2014, p.10-9-10) defines governance in the public sector as a set of leadership, strategy and control mechanisms put in place to evaluate, direct and monitor management, with a view to conducting public policies and the render of services of interest to society.

THE ROLE OF THE TCU IN THE PROCESS OF IMPROVING REGULATORY GOVERNANCE

Among its activities, TCU develops operational audit activities, which according to Lima (2015) allows the evaluation of jurisdictional bodies and units, divided into two modalities: performance audit and program evaluation audit.

Against the constant debates and questionings about the performance of national regulatory agencies, starting at 2009 TCU conducted an operational audit to assess the governance of infrastructure regulatory agencies in Brazil, identifying possible risks and structural failures that could compromise the achievement of the goals of state regulation, proposing solutions of an operational and legislative nature, in order to strengthen the current regulatory model. This work resulted in Resolution nº 2.261 / 2011-Plenary, of August 24, 2011.

As a result of another operational audit procedure, the TCU prolated Resolution nº 240/2015 - TCU - Plenary, which contains several recommendations to federal infrastructure regulatory agencies. Among the recommendations, we can highlight those that studies about the implementation of Regulatory Impact Analysis (AIR in Portuguese) and the measures viewing to manage institutional risks, through the development of a risk management policy.

Thus, we realize in the actions developed by the TCU, an increasing attention regarding the improvement of the governance of the federal regulatory agencies. The improvement of the regulatory quality is one of the requirements that can contribute to the increase in the quality of the services provided by the agents that work in the regulated sectors.

As Menezes (2012) emphasizes, even without creating new rules, the audit of the Court of Accounting presents significant impacts on users of regulated services. Since, contrary to specific decisions of the judiciary regarding the noncompliance of the legislation by the concessionaires in providing services to the user, the Court

carries out a broader control, verifying the performance of the regulatory agency in fulfilling its institutional mission.

In line with its initiatives to analyze the governance of federal public administration agencies and entities, in 2014, the TCU published a document entitled "Public Governance: Referential Basic Governance Applicable to Public Administration Agencies and Entities and Inducted Actions to Improvement"

According to TCU (2014, p.10), the Basic Governance Referential: "It is a document that gathers and organizes good practices of public governance that, if well observed, can increase the performance of public agencies and entities." Also according to the TCU, the referential has the purpose of analyzing the governance of public administration agencies and entities, abled to apply, with adaptations, to other perspectives of observation.

PREVIOUS RESEARCH ON THE TOPIC

Cheng and Heberton (2008) developed a study aimed at improving the understanding of the institutional framework and relations which form the main link between telecommunications liberalization and regulatory governance in Taiwan based on five governance mechanisms (clarity of roles; participation; independence; accountability; and transparency).

Correa *et al* (2008) carried out a research where they present a governance index for 21 regulatory agencies (federal and state) of infrastructure. The main index was composed of four sub-indices that captured issues related to autonomy, decision making process, tools for effective decision making and accountability.

The work results of Correa *et al* (2008) show that regulatory governance is relatively similar within the 21 agencies, with better results at the federal level than at the state level. Besides that, we found that the formal existence of attributes does not always result into effective governance. Of the four dimensions of regulatory governance, autonomy and accountability were, on average, more developed than

the decision making process and regulatory tools.

The study of Oliveira (2014) aimed to verify the adherence between the governance model of the National Institute of Social Security (INSS in Portuguese) with the recommendations of the Governance Manual of the Brazilian Federal Court of Accounts (TCU). The results showed that there is a concern of the Autarchy to adopt good practices of governance since it was verified that the majority of the practices adopted by the INSS are compatible with the recommendations of the TCU.

In the same sense of Oliveira (2014), Santos (2016) developed a paper with the objective of identifying the good Governance practices contemplated in the Basic Governance Referential of the TCU that are present in the normative scope of the Court of Accounts of the State of Rio Grande do Sul. According to the results of his research, the author notes that, under the general aspect, the TCE-RS uses the good practices of public governance proposed in the Referential, or is seeking to implement them, aiming to improve its performance as a public agency.

As we can see, governance studies have gained space in research agendas, both by means of national and international works that seek to verify if good practices of public governance are present in entities such as regulatory agencies, courts of accounts, etc.

In a study that has as a goal to analyze the contribution of new accounting patterns to the practices of corporate governance in the Brazilian public sector, Cappellesso *et al* (2016) have found evidence that in establishing rules and concepts about the records, classifications, planning, control, elaboration, and disclosure information, the new accounting patterns contribute positively for the mechanisms and principles of recommended governance by TCU and IFAC, especially in due to respect of transparency and accountability. Dissemination of information, new accounting standards positively contribute to the governance mechanisms and principles advocated by TCU and IFAC, especially regarding transparency and accountability.

The work of Barbosa (2011), which aims to demonstrate the importance and relevance of external control and accountability in the improvement of the governance of the agents that act in the regulation of the infrastructure sectors in

Brazil at the federal level, evaluating under the scope of positive economic theory, the impact of TCU's performance in this context.

In the same sense, Menezes (2012) sought to analyze the horizontal accountability fulfilled by the Brazilian Federal Court of Accounts on federal regulatory agencies. The study analyzed the effect of audits on the quality of regulation for users in the regulated sectors. According to the author, inspections on the activities of regulatory agencies have contributed to the improvement of regulatory rules, being the Court of Accounting an important actor of horizontal control of the agencies, avoiding excessive discretion of the regulatory entity in defining the criteria of regulation.

We observed in the studies presented previously that the TCU has played a relevant role in the process of improving regulatory governance. In this sense, the Court develops audits and makes recommendations to the jurisdictional entities in the sense of implementing mechanisms in objective to increase its level of governance.

With the theoretical reference, it will be exposed the following methodological procedures used in the research.

METHODOLOGICAL PROCEDURES

THE COSTA *ET AL* (2014) MODEL AND THE POPULATION SURVEYED

Costa *et al* (2014) measured the transparency of 28 Municipalities with a population between 50,000 and 100,000 people, from the 5 Brazilian regions, and established a classification based on what they called the transparency index model. The index reveals the level of transparency of the municipalities that compose the sample, according to a series of investigated items categorized into three distinct classes. The attendance to each of these items is measured by means of a dichotomous variable, attributed to "1", when we observe its attendance, or "0", in the hypothesis in which the Municipality does not attend to the item.

The authors also gave weight to each of the classes, so the function is as follows:

$$IT = \frac{\sum A1 \times 3 + \sum A2 \times 6 + \sum A3}{7,5} \quad (1)$$

Where A1 reflects the points in the "Aspects of the Portal" class, A2 is the variable of the "Fiscal Transparency Instruments" class and A3 is the "Frequency of Update" class. Although there is no justification for attributing a burden to the classes, the model serves as a method to be applied to investigations of the adequacy of a certain entity to certain non-measurable parameters, measured only by binary evaluation (existent or non-existent).

Therefore, since it is properly adjusted to meet the specificities of this research, the one in model is revealed appropriate to the objective here proposed, which is to investigate the level of adequacy of the Brazilian federal regulatory agencies to the TCU Basic Governance Referential (BRASIL, 2014). Board 1 lists the agencies that were the subject of this research.

Board 1: Brazilian Federal Regulatory Agencies

Initials	Denomination
ANEEL	Agência Nacional de Energia Elétrica
ANP	Agência Nacional do Petróleo, Gás Natural e Biocombustíveis
ANS	Agência Nacional de Saúde Suplementar
ANVISA	Agência Nacional de Vigilância Sanitária
ANA	Agência Nacional de Águas
ANCINE	Agência Nacional do Cinema
ANTAQ	Agência Nacional de Transportes Aquaviários
ANTT	Agência Nacional de Transportes Terrestres
ANAC	Agência Nacional de Aviação Civil
ANATEL	Agência Nacional de Telecomunicações

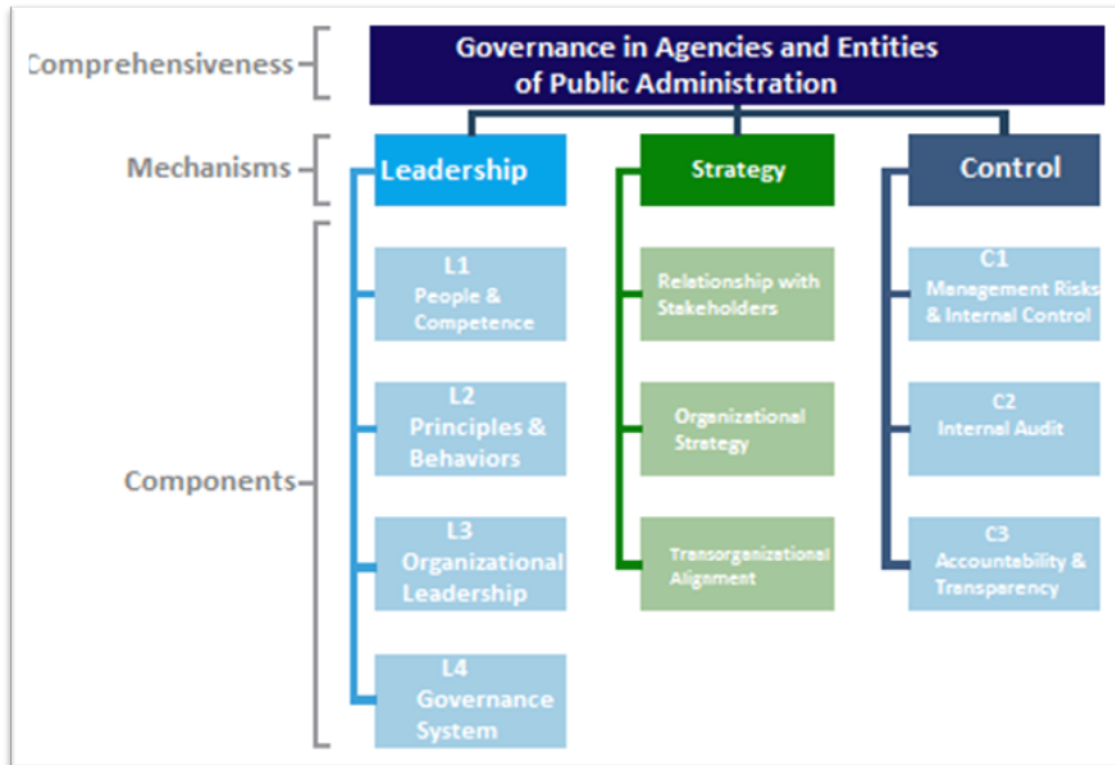
Source: Proper production.

GOVERNANCE IN PUBLIC ADMINISTRATION AGENCIES AND ENTITIES, DATA COLLECTION AND ADAPTATION OF COSTA *ET AL* (2014) MODEL

TCU's Basic Governance Referential (BRASIL, 2014) points out three basic mechanisms of governance that must be observed by all public administration agencies and entities: leadership, strategy, and control. These mechanisms contemplate some components, which public entities must observe from different

perspectives. Figure 1 summarizes these mechanisms and their respective components.

Figure 1: Governance in Public Administration Agencies and Entities.



Source: TCUs` Basic Governance Referential (BRAZIL, 2014).

Each component is divided into subcomponents that characterize them. Board “2” shows the mechanisms, components, and subcomponents, as well as describing the sources of information used in this work as a basis for analyzing and measuring the adequacy of the analyzed agencies to the TCU Basic Governance Referential.

Board 2: Information Sources

Mechanisms	Components e Subcomponents	Information Sources
LEADERSHIP	L1 People & Competence	
	L1.1 Transparency to the process of member selecting of CA	Prediction in Law of creation & internal regiment
	L1.2 Adequate training of high board members of administration	Verification in management report
	L1.3 Sistema de avaliação de desempenho da alta administração	Prediction in institucional standards
	L1.4 Joint of transparent benefits & adequate	Prediction in institucional standards
	L2 Principles & Behaviors	
	L2.1 Adopt code of ethics & conduct	Institution of code of conduct from AA
	L2.2 Control to prevent preconception, bias or conflicts	Laws & standards from institutions over conflict of interest
	L2.3 Mechanisms to guarantee that the AA act properly to patterns	Prediction in code of conduct from AA
	L3 Organizational Leadership	
	L3.1 Evaluate, orientate & monitor the management of the organization	Seek in Strategical Planning & Management Report
	L3.2 Establishment of politics & guidelines for management	Prediction in institucional standards
	L3.3 Internal capacity to evaluate, orientate & monitor	Prediction in institucional standards
	L3.4 Self responsibility for management of risks & internal control	Prediction in institucional standards
	L3.5 Evaluate results of control activities	Prediction in institucional standards
	L4 Governance System	
L4.1 Establish the internal instances of governance	Prediction in institucional standards	
L4.2 Guarantee the balance between power & segregational functions	Prediction in institucional standards	
L4.3 Establish the system of governance of the organization	Prediction in institucional standards	
STRATEGY	E1 Relationship with Stakeholders	
	E1.1 Establish & propogate channels of communication	Prediction in institucional standards
	E1.2 Promote a social participation	Prediction in Law of creation & internal regiment
	E1.3 Establish a objective & professional relation with media	Prediction from sector of public relations
	E1.4 Secure to attend the maximum number of people	Prediction in institucional standards
	E2 Organizational Strategy	
	E2.1 Establish model of strategy management	Prediction in institucional standards
	E2.2 Establish a organizational strategy	Presence of Strategical Planning
	E2.3 Monitor & evaluate the strategy execution	Elaboration of Management report
	E3 Transorganizational Alignment	
E3.1 Establish mechanisms of joint action for decentralization	Prediction in institucional standards	
CONTROL	C1 Management of Risks & Internal Control	
	C1.1 Establish system of management of risks & internal control	Prediction in institucional standards
	C1.2 Monitor the system of management of risks & internal control	Verification in Management or Audit Report
	C2 Internal Audit	
	C2.1 Establish the role of internal audit	Prediction in institucional standards
	C2.2 Secure that internal audit be independent	Prediction in institucional standards
	C2.3 Secure that internal audit add value to the organization	Prediction in institucional standards
	C3 Accountability & Transparency	
	C3.1 Transparency of the organization to the stakeholders	Availability of information from any media
	C3.2 Be accountable of the results of the governance system	Elaboration of Management Report
C3.3 Evaluate the image of the organization & satisfaction	Research of satisfaction from any media	

Source: Proper production starting from TCU Basic Governance Referential (BRASIL, 2014).

The information used was extracted from the websites of the respective regulatory agencies. When some data were not found, we launched hands on the Electronic Citizen Information Service (e-SIC), in the last effort to obtain the data or at least a justification for the unavailability of the data.

After the procedures for analyzing the presence of each of the components and subcomponents that integrate the governance mechanisms, the general classification was performed, based on the score obtained by each of the regulatory agencies surveyed.

To the regulatory agency was conferred a rating ranging from zero (representing the situation in which none of the governance subcomponents is present in the assessed entity) to 10 (representing the situation in which all governance items are present in the assessed entity) to each mechanism of governance. This total was divided by the number of governance mechanisms so

that the maximum score of the Governance Index of the regulatory agencies is 10.

The score of each subcomponent is composed of dichotomous variation, whose score is one or zero, depending on the integral (or not) control of each subcomponent command, as shown in Table 2. Thus, the sum of the scores attributed to the subcomponents belonging to each mechanism was weighted by factor normalizing the score to a maximum of 10.

We will not adopt weight to the metric, since there is no justification for better qualifying one mechanism, component or subcomponent in relation to another, unlike the original Costa *et al* (2014) model. In this way, the function will be:

$$IG = \frac{(fnL \sum_{L=1}^{15} L_i) + (fnE \sum_{E=1}^8 E_i) + (fnC \sum_{C=1}^8 C_i)}{3} \quad (2)$$

Where L represents the leadership mechanism. “E” the strategy mechanism and “C” the control mechanism. *fnL*, *fnE* e *fnC* represents the factors of note normalization of each component. In possession of these elements, we will expatiate the results obtained.

RESULTS

The data obtained through the institutions' websites or the use of the e-SIC were compiled in Board 3 below, as well as the binary classification. It should be noted that subcomponents L4.2 (guaranteeing power balancing and segregation of functions), E1.3 (establishing an objective and professional relation with the media), E3.1 (establishing mechanisms for conjunct action with a view to decentralization) and C2.3 (ensuring that internal audit adds value to the organization) were excluded from the analysis in view of the researchers not identifying sources of secure information.

In this way, the factors of notes normalization were assigned according to the number of subcomponents kept in the analysis, to allow the maximum score assigned to each mechanism to be 10, as described in the methodology. Then the

Governance Index for this work will be measured according to function (3):

$$IG = \frac{(0,71 \sum_{L=1}^{14} L_i) + (1,66 \sum_{E=1}^6 E_i) + (1,43 \sum_{C=1}^7 C_i)}{3} \quad (3)$$

Board 3: Binary classification of mechanisms from public sector governance.

Components e Subcomponents	ANEEL	ANATEL	ANTT	ANTAQ	ANAC	ANS	ANVISA	ANA	ANCINE	ANP	
• People & Competnce (L1)											
L1.1	0	0	0		0	0	0	0	0	0	
L1.2	0	0	0	0	0	0	0	0	0	1	
L1.3	1	0	0	0	1	0	1	0	0	0	
L1.4	1	1	1	1	1	1	1	1	1	1	
• Principles & Behaviors (L2)											
L2.1	1	1	1	0	1	1	1	0	1	1	
L2.2	1	1	1	1	1	1	1	1	1	1	
L2.3	1	1	1	1	1	1	1	1	1	1	
• Organizational Leadership (L3)											
L3.1	1	1	1	1	1	1	1	1	1	1	
L3.2	1	1	1	1	1	1	1	1	1	1	
L3.3	1	0	1	0	0	1	1	0	0	1	
L3.4	0	0	1	0	0	1	1	0	1	0	
L3.5	1	1	1	1	1	1	1	1	1	1	
• Governance System (L4)											
L4.1	0	0	1	0	0	1	1	0	1	1	
L4.3	0	0	1	0	0	1	1	0	1	1	
	0,71	6,39	4,97	7,81	4,26	5,68	7,81	8,52	4,26	7,81	7,10
• Relationship with Stakeholders (E1)											
E1.1	1	1	1	1	1	1	1	1	1	1	
E1.2	1	1	1	1	1	1	1	1	1	1	
E1.4	1	1	1	1	1	1	1	1	1	1	
• Organizational Strategy (E2)											
E2.1	1	1	1	1	1	1	1	1	1	1	
E2.2	1	1	1	1	1	1	1	1	1	1	
E2.3	1	1	1	1	1	1	1	1	1	1	
	1,66	10,00	10,00	10,00	10,00	10,00	10,00	10,00	10,00	10,00	
• Management of Risks & Internal Control (C1)											
C1.1	1	0	1	0	0	1	1	0	1	0	
C1.2	0	0	0	0	0	0	0	0	0	0	
• Internal Audit(C2)											
C2.1	1	1	1	1	1	1	1	1	1	1	
C2.2	1	1	1	1	1	1	1	1	1	1	
• Accountability & Transparency (C3)											
C3.1	1	1	1	1	1	1	1	1	1	1	
C3.2	0	0	0	0	0	1	0	0	0	1	
C3.1	0	0	0	0	1	0	1	0	0	1	
	1,43	5,72	4,29	5,72	4,29	5,72	7,15	7,15	4,29	5,72	7,15
TOTAL	7,37	6,42	7,84	6,18	7,13	8,32	8,56	6,18	7,84	8,08	

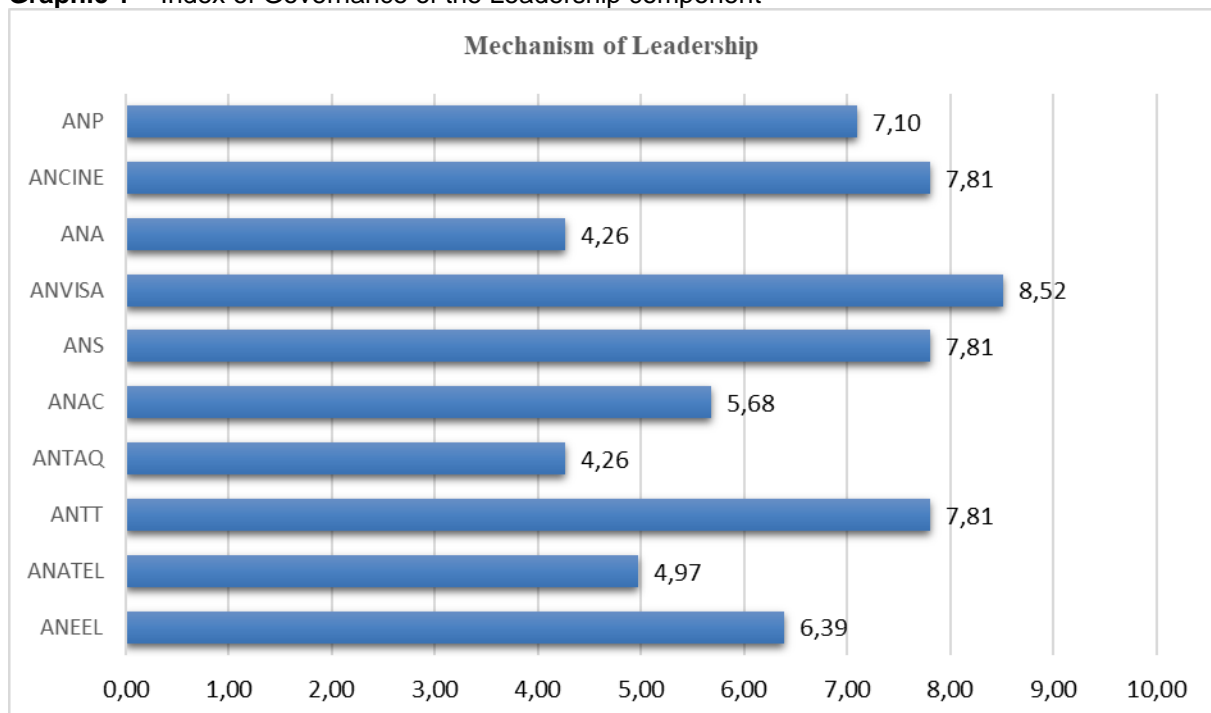
Source: Proper production starting from the TCU Basic Governance Referential(BRASIL, 2014).

The results of the research have evidenced that, in relation to the leadership mechanism, only four of the regulatory agencies analyzed presented a satisfactory

level of adherence to what the TCU Basic Governance Refential (BRASIL, 2014) foresees. However, according to Chart 1, ANA, ANTAQ and ANATEL agencies performed poorly, showing that these entities have a maturity level that opens opportunity to implement actions aimed at improving the constant governance components of the leadership mechanism.

Graphic 1 highlights the governance indices of the regulatory agency leadership mechanism.

Graphic 1 – Index of Governance of the Leadership component



Source: Elaborated by the authors from the data obtained.

It is seen that of the ten agencies analyzed, seven presented an index above five points, being five of which exceeded grade seven (ANP, ANCINE, ANVISA, ANS, and ANTT) when analyzing the leadership mechanism on governance. Highlight for ANVISA, the only agency with a grade above eight.

Attention is drawn to the fact that, in terms of the "people and skills" dimension of the leadership mechanism, the performance of the agencies has generally been low.

The survey showed that only the agencies ANEEL, ANAC and ANVISA have

instituted a system of performance evaluation for the members of the top management of the entity. However, we note that none of these entities performs evaluation on performance for the members of its collegiate boards according to the applicable legislation, therefore possessing a mandate for a determined period, which usually varies from four to 5 years. In this way, it is legally possible that performance evaluations have any reflection on their condition of tenure.

We observed a relevant distance from the best performance agencies in relation to those that did not present an adequate score.

It is noteworthy that, in 2016, there was a change in the career structure of the servants of the regulatory agencies, being the main change the extinction of the performance bonus and the transformation of this remuneration into a subsidy. The referred bonus was calculated by means of the individual evaluation of the servers.

Starting by the change in the remuneration structure of the servers of the regulatory agencies, the variable remuneration was extinguished based on the performance achieved by the server. In this sense, this change can be considered as a regression in what it refers to management of people and skills, which is one of the components of the Leadership mechanism.

On the other hand, the research results have evidenced that the governance Strategy mechanism of the regulatory agencies was the one that presented greater adherence to what the TCU Basic Governance Referential prescribes (BRASIL, 2014). In this mechanism, all the agencies have demonstrated that they are fully aligned with the model elaborated by the TCU.

The Strategy mechanism incorporates subcomponents that are present in the governance model of federal agencies, such as strategic planning and the relationship with stakeholders. However, we note that the result might have been impaired as the result of lack of scoring of subcomponents E1.3 (establishing an objective and professional relation with the media) and E3.1 (establishing joint action mechanisms for decentralization).

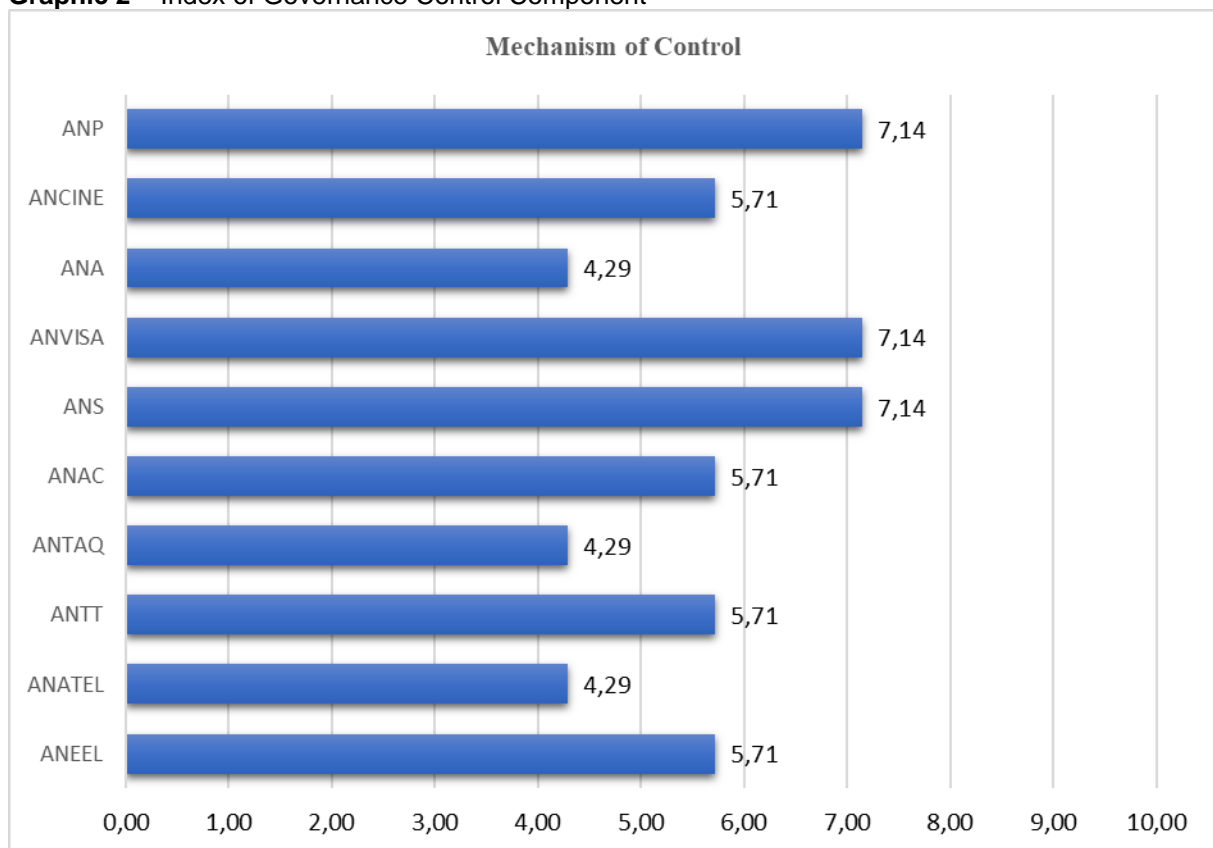
Now regarding the mechanism of Control of TCU's Basic Governance Referential (BRASIL, 2014), it's noted of a low level of adherence of regulatory

agencies. Seven of the ten agencies had indices lower to six, and only three of them had outstanding indices (ANP, ANVISA, and ANS).

We noticed that, despite the fact that regulatory agencies periodically conducted satisfaction surveys of users of the services regulated by them (telephony, energy, etc.); this practice is rarely used when it comes to research on the level of user satisfaction with services provided by the regulatory agency itself.

Graphic 2 shows the results of the Control mechanism.

Graphic 2 – Index of Governance Control Component



Source: Elaborated by the authors from the data obtained.

The results makes evidence that the control mechanism was the one that presented the lowest level of alignment with the practices established in the TCU Basic Governance Referential (BRASIL, 2014). This fact demonstrates that regulatory agencies, what it refers to control mechanism, need to implement improvements in their governance stage.

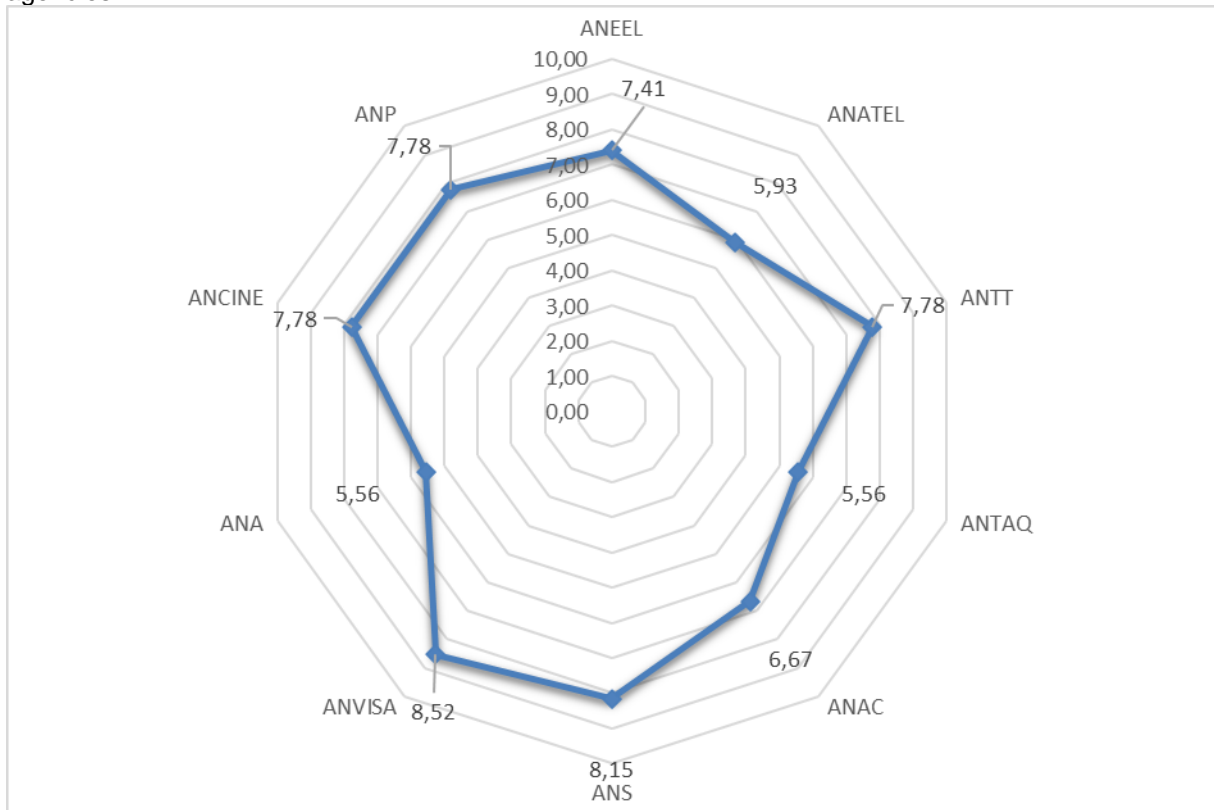
However, we noted that some agencies have recently undertaken efforts in implementing an independent governance and risk management framework. We would mention ANTT, as possessing in its organizational structure a superintendence of regulatory governance. The agency also established a Governance, Risk and Control Committee. In the same sense, we verified that ANAC also created a Governance, Risks and Control Committee.

Recent initiatives such as taken by ANTT and ANAC demonstrates that risk management has entered the agenda of these institutions as one of the actions to be taken to the improvement of control mechanism.

The Governance Index (IG in Portuguese) of the Brazilian federal regulatory agencies, according to the figures in Chart 4, demonstrates the need to improve the governance mechanisms of these institutions, although, overall, they have presented a performance above the index average.

The results of the research also have evidenced that the agencies with the least satisfactory performance were, in ascending order of the obtained scores: ANA (5.56); ANTAQ (5.77); ANATEL (5.93) and ANAC (6.67).

Chart 4 - Governance index of regulatory agencies.



Source: Elaborated by the authors from the data obtained.

The governance indices obtained in this research showed that, in relation to the level of adherence to the governance of these institutions by the Basic Referential of the TCU, the agencies that stood out were ANVISA (8.52) and ANS (8,15).

It's important to emphasize that the Governance Index presented in this study can be considered as an apparent index, since one of the limitations of the research is the fact that the analyses relied on the existence or not of adequacy to the subcomponents of the governance mechanisms, according to the Referential Model of the Brazilian Federal Court of Accounts. No additional consideration was made on its effectiveness. Thereby, it's possible that even if a practice is observed, based on the information obtained through the consultations of the entities' websites, the effectiveness of the referred practice may be lower than expected.

The results found in this work contrasts with the conclusions from Correa *et al* (2008) research, which showed that regulatory governance is relatively similar within the 21 agencies examined, between federal and state agencies. As was possible to

see, this work showed that regulatory governance in federal agencies is unequal.

FINAL CONSIDERATIONS

In the current Brazilian scenario in which the participation of the private sector in providing goods and services has gained more and more space in the economy, the social and economic relevance of the regulatory agencies is indisputable, since among its objectives is to seek the balance of interests related to the agents, such as government, users and companies. In this sense, it becomes imperative that regulatory agencies seek more and more to perfect their governance mechanisms.

The present research sought to measure the governance index of federal regulatory agencies, using as a parameter that prescribes TCU's Basic Governance Referential.

The results of the research have evidenced that the components of the TCU Referential in which the agencies presented the lowest level of adherence were Leadership and Control. Such findings have demonstrated the need for these institutions to implement actions aiming to improve their levels of governance, notably referring to the subcomponents of the Leadership and Control mechanisms.

The findings of this research corroborate the results evidenced in the operational audit performed by the TCU and in the recommendations contained in Judgment No. 240/2015 -Plenary. However, since the delivery of this judgment, some agencies have implemented mechanisms that aim to adapt the governance structure to the recommendations issued by the TCU. Nonetheless, the findings contrasts with Correa *et al* (2008) conclusions. Future researches may build on in this matter.

Another factor that needs highlighting is the TCU's outstanding role in encouraging the improvement of the governance of federal regulatory agencies, either through recommendations deriving from its operational audits or even through its initiative to elaborate and disseminate the Basic Referential of Governance.

The overall result of the governance index indicates that the regulatory

agencies surveyed should refine their governance structure in order to increase the level of adherence to the practices to what the TCU Referential prescribes.

Future researches may also extend the use of the proposed model to measure governance in other government sectors, such as public companies, foundations, state bodies, etc. Another suggestion is the creation of models that use different metrics from the one used in this work, so that the results can be compared.

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