

IMPEACHMENT, CRÉDITOS ADICIONAIS DO GOVERNO FEDERAL E O PROCESSO DECISÓRIO ORÇAMENTÁRIO: UM NOVO DILEMA PARA O DIREITO E PARA A POLÍTICA?

IMPEACHMENT, ADDITIONAL CREDITS AND BUDGETARY DECISION-MAKING: A NEW DILEMMA FOR THE LAW AND FOR THE POLITICS?

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RESUMO

Não existem muitos estudos sobre os créditos adicionais no Brasil, tanto no Direito quanto na Ciência Política. Os créditos adicionais são instrumentos rotineiros na atividade orçamentária nos governos, mas ainda assim poderosos, pois permitem que o Poder Executivo remaneje recursos públicos sem a participação, ao menos num primeiro momento, do Poder Legislativo. O artigo analisa os créditos adicionais dos últimos governos brasileiros, e procura determinar como vêm sendo utilizados pelos presidentes da República. Para verificar a variação e se houve excesso na adoção desses instrumentos pelo governo federal, foi organizada e analisada uma base de dados com as informações sobre créditos adicionais entre 2011 e 2016. A questão central abordada no artigo é se retornaremos ao “mundo” das relações institucionais anterior a 2015 ou se 2016 terá ressonância no Congresso, TCU e demais agências de controle do orçamento no futuro próximo. Conclusões parciais, sem futurologia, indicam que o orçamento anual sempre estará aberto a alterações por créditos adicionais, com a expectativa de que as instituições e poderes tenham como norte a garantia da democracia e da previsibilidade sobre as finanças públicas. Entretanto, não é possível afirmar que, após o processo de *impeachment*, os créditos adicionais ganharão maior atenção da investigação sobre o processo orçamentário ou que esse foi um evento único e que retornará a lógica anterior, de condescendência da relação Executivo e Legislativo e instituições de controle na execução orçamentária.

PALAVRAS-CHAVE

Direito Financeiro. Créditos adicionais. *Impeachment*. Controle. Orçamento público.

ABSTRACT

There are not a lot of studies about presidential appropriation in Brazil – the almost equivalent of supplemental appropriation in USA – both in Law and in Political Science. The presidential appropriation is an ordinary instrument in the government’s activity, and it is powerful enough to allow the Executive Branch to spend the money without the participation of the Legislative, at least at the first moment. This article analyses the presidential appropriation of the three previous presidents of Brazil and aims at searching how the tool has been applied by them. To verify the variation and if there was abuse in the adoption of these instruments by the federal government, we organized and analysed a database with information about additional appropriation – a category of legislative acts that modify the budget, including presidential appropriation – between 2011 and 2016. The central question studied is: Will the government, the parliament, the Union Audit Court and other institutions accept a new reality in public finance? Partial conclusions, with no intention make false previsions, indicate that the federal budget will ever accept changes by additional credits – additional appropriations –, but with the obedience of the rule of law, the democracy and the previsibility of the public budget. However, it is not possible to confirm that the additional appropriations, after the impeachment of former President Dilma Rouseff, will be subject of more studies inside the budget process. If not be subject of more studies, the country would reestablish the permissiveness between the branches and institutions.

KEYWORDS

Public Finance Law. Additional credits. Impeachment. Accountability. Public budget.

INTRODUCTION

During the impeachment process of the President of the Republic, discussions began about the legitimacy of additional credits of the federal government, whose main function is, with each additional kind of credit in its own way, to modify the approved Annual Budget Law. The actions of the President were questioned, because of the use of the credits, without the proper parliamentary authorization. In the end, it served as one of the legal grounds for impeachment.

Among the additional credits – which are classified as supplementary, special and extraordinary –, two are independent, at first, from the participation of the Legislative Power: the additional and the extraordinary credits. These are opened by provisional measure, while those, by presidential decree.

The Union, during Dilma Rouseff’s administration and in the past governments, used additional and extraordinary additional credits as tools for increasing budgetary power. Economic difficulties and expansion of the decision-making power of the President of the Republic meant that some situations, which should be exceptional, became regular.

The opening of additional appropriations serves as “reinforcement of budgetary allocation” (article 41, Law 4,320/1964), this means that a reinforcement of pre-existing expenditure in the Annual Budgetary Law (ABL), and may be authorized by ABL itself (article 165, § 8, Constitution),

giving the opening by decree of the Executive. Extraordinary credits are intended to “meet unforeseeable and urgent expenses, such as those arising from war, internal commotion or public calamity” (article 167, paragraph 3, Constitution) and may be opened by interim measures (article 62, Constitution), whose competent is also the Executive. They should not be used to unbalance the budget. They do not serve to create a parallel budget. Nor to artificially strengthen the state cashier in times of crisis.

To verify if there was an excess in the adoption of these instruments by the federal government, we raised information about additional credits between 2011 and 2016 (by September). Before, however, we present how the political science literature understands the budget decision process and describes the secondary role of additional credits. It is unclear whether, after the impeachment process, additional credits will gain more attention from research on the budget process or whether this was a unique event and will return the previously understood logic of Executive and Legislative engagement in budget execution.

The study that is presented is continuous. It began in the year 2016, during the process of impeachment (originating articles with partial research), and continues in the future. It is necessary to seek to understand the functioning of the government and the parliament when acting in the public finances.

1 ADDITIONAL CREDITS AND ANALYSIS OF THE DECISION-MAKING PROCESS OF THE UNION BUDGET: UNDERSTANDING BUDGETARY POLICY

The debate on the legislative and decision-making processes, since the 1990s, has focused primarily on the Executive’s institutional prerogatives in budget execution and the use of this dossier to manage the legislative coalition of government, which has popularized the term *authorizing budget* to describe this procedure; second, and depending on the first institutional aspect, in the liberation game (partial or total execution) of the parliamentary amendments (individual and collective) to the budget, as a mechanism for negotiating parliamentary support for the federal government (ALSTON et al., 2005, 2009; ALVES; HELLER, 2013; FIGUEIREDO; LIMONGI, 2002, 2008; GOMES NETO et al., 2010; LIMONGI;

FIGUEIREDO, 2005; MESQUITA, 2009; PEREIRA; MUELLER, 2002, 2004; ROCHA, 1997; SANTOS; MACHADO; ROCHA, 1997)¹.

Santos, Machado and Rocha (1997, p. 119) propose that the Executive Power uses several expedients, including additional credits, to negotiate the agenda with the parliamentary support coalition. According to the authors:

In the budget execution phase, however, the Executive turns the game [...] even deciding ultimately on the distributive conflict, the Executive is not the absolute sovereign, thanks that is to negotiate vetoes, cuts, additional credits in exchange of parliamentary support for the priority policies of the governmental agenda (SANTOS; MACHADO; ROCHA, 1997, p. 119)

One of the authors of the previous text, in an individual study, describes how additional credits were present in the implementation process of the 1990s Union Budget, highlighting the preponderant role of the Executive:

[The LOA authorizes the] Executive Power to open additional credits up to 20% of the amount due [...] without prior legislative authorization. Among the sources of possible resources for supplementation is the cancellation of up to 20% of appropriations indicated in the budget law. Only for the 1997 Budget did these limits fall to 15%, supplementation and cancellation [...]. In practice, this provision allows the Executive a considerable margin of maneuver on the Budget Law without the Legislative being heard, as each appropriation can be canceled and increased in a considerable margin (ROCHA, 1997, p. 92)

Indeed, for most of the authors who have devoted themselves to the study of budget decision-making over the past decade, even with the addition of additional credits as a secondary aspect of the analysis, institutional dominance and control of the Executive Power over budget execution has been a constant, regardless of government. Regarding the use of additional credits in the past decade, Alves and Heller (2013) highlight:

Executive control over the budget is also achieved through a series of accounting maneuvers undertaken by the planning and finance ministries. One such strategy is the purposeful

¹ The inclusion of the institutional prerogatives of the Executive in budget execution in the analysis of coalition presidentialism is not a peculiarity restricted to Brazilian political science. In a comparative study of presidentialism, government coalitions and parliamentary multipartyism, comparing countries in Latin America, Africa, Asia and Eastern Europe, Chaisty, Cheeseman and Power (2014) describe that presidentialism in multiparty coalitions has resources (“Presidential Toolbox”) to manage the coalition of government, the prerogatives of the budget being only one of these tools. According to the authors: “To derive the tools that presidents use to manage diverse coalitions, we compare the existing literature on the strategies utilized by executives across the three regions. In the following review of the presidential literature on Latin America, the former Soviet Union and Africa, we integrate several streams of research that have hitherto been disconnected. This inductive approach leads to the classification of presidential tools into five broad clusters: agenda power (legislative powers awarded to the president, executive decree authority), budgetary prerogatives (control of public spending), cabinet management (distribution of portfolios to alliance members), partisan powers (influence of the president over one or more coalition parties), and informal institutions (a diverse residual category reflecting countryspecific historical and cultural factors, which we therefore approach inductively across our cases below)” (CHAISTY; CHEESEMAN; POWER, 2014, p. 8).

understatement of future revenues in order to cap budgetary growth, even when the budget fails to cover all existing expenditures. This shortfall is then addressed during execution by the inclusion of additional budgetary credits throughout the fiscal year. Fiscal year manipulation is also customary: capital and social sector expenditures are withheld until financial benchmarks have been achieved and then are cleared toward the end of year, spiking every December in what is commonly referred to as “Christmas packages” (ALVES; HELLER, 2013, p. 81).

Looking at the use of additional credits in the last sixteen-year budgets, which cover the last three presidencies prior to the 2016 impeachment and five presidential terms (complete or incomplete), it is possible to note that the percentage of additional credits issued in relation to the approved budget is variable in magnitude but constant (see Table 1). That is, throughout the period (2001-2015) there is an impact of the additional credits in the approved budget. On average, additional credits accounted for 7.2% of the total budget (including cancellations, transfers and expansion of budgetary resources) and 8.2% of increases in the current net budget (sum of fiscal, social security and state investment budgets and exclusion debt refinancing and constitutional and legal transfers).

Table 1 – Additional Credits as % of the Approved Budget (2001-2015)

Year	Additional Credits		Year	Additional Credits	
	Total Loans – % of the Approved Budget	Net additions to the Budget – % of the Net Budget*		Total Loans – % of the Budget Approved	Net additions to the Budget – % of the Net Budget*
2001	2.9	6.6	2009	7.8	9.5
2002	9.0	12.9	2010	4.7	6.3
2003	6.2	11.9	2011	5.1	3.6
2004	2.6	6.0	2012	11.1	6.1
2005	1.7	4.2	2013	12.2	11.1
2006	4.2	8.0	2014	13.9	11.6
2007	2.5	4.7	2015	8.4	2.7
2008	13.9	17.8			

Sources: Additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers (period 2011-2015); Alves and Heller (2013, p. 82), from the portal of the Senate “Follow Brazil”, for the period 2001-2010; Chamber of Deputies (BRASIL, 2013, pp. 48 and 116), for the % of the approved net budget (2001-2015).

* Net Budget: sum of fiscal and social security budgets plus investment budgets of state-owned companies, excluding debt refinancing and constitutional and legal transfers.

In Table 1, it is possible to observe three moments in which the use of additional credits is exceptionally high, each in one of the last three presidencies: 2002-2003, 2008-2009 and 2012-2014. In two of these periods, involving the years of 2002 and 2014, there is the combined occurrence of electoral year, inflationary rise and low economic growth. Even though there are years of high electoral competition, it is not possible to determine in advance whether the preponderant factor for the use of additional credits was to maximize the position of the government in electoral competition or to reallocate budget expenditures in the face of inflationary process and low economic growth. Certainly, if one or both of the reasons are present, the increase in additional credits involved a budgetary policy strategy by the government responsible for publishing. On the other hand, the period 2008-2009 seems to express the governmental strategy to face the exceptionality of the reflection of the economic crisis, brief depression and recovery of growth, including the use of exceptional budgetary resources as a countercyclical measure to the crisis.

Without going into the juridical aspects that involved the *impeachment* of 2016, a question about the use of additional credits (supplementary, special and extraordinary) in the budget execution process is the strategy that moves the Executive Power when editing the changes in the current budget approved by parliament. There are two main explanatory propositions in the literature that analyze the issue. The basic distinction between the

two explanations involves the kind of cooperation between government (Executive) and parliamentary coalition and whether there is a prevailing agenda in budget execution (consolidated between government and congress, mediated by party logic) or whether there are two conflicting agendas (a generalist, the Executive, and another particularist, the parliamentarians). In both explanations, the center of the debate involves the parliamentary amendments, with the additional credits having a secondary, but different role.

In the first explanation, Figueiredo and Limongi identify that, in budget execution, there is a complementary and non-conflicting agenda between the Executive and Legislative branches. That is, in the “release of funds in the relations between the Executive and the Legislative,” votes are not “exchanged for the execution of amendments [...] [,] it is not possible to establish the intended causal relation [in the thesis of “exchange currency”]. Amendments are executed without the expected votes being given, and votes are given without the counterpart, the release of funds, occurs” (LIMONGI, FIGUEIREDO, 2005, p. 765). Regarding the budget process, the authors state:

Regarding the priorities of one and the other power expressed in the allocation of budgetary resources, we show that the differences are very small. This means that there are no conflicting agendas. More specifically, in executing resources allocated by parliamentarians through individual amendments, the Executive is not yielding to pressure and failing to execute its agenda. The allocation of resources made by legislators is complementary, not contrary to that of the Executive. This is because the control that the Executive has over the budget process is greater than is usually supposed. The Executive is able to channel the demands of parliamentarians and accommodate them within their program. For that reason, it also carries out amendments by opposition members of parliament and/or the situation that do not vote in the interests of the government (LIMONGI; FIGUEIREDO, 2005, p. 741).

Specifically, on the additional credits, the authors see in this file predominantly the transfer of resources from non-compulsory expenditures (investments) to the mandatory expenditures provided for in the budget law (personnel expenses and current expenditures). In this sense, they do not penalize the agenda of investments of individual amendments of the parliamentarians, but the whole agenda of joint investment of Executive and Legislative, in favor of expenses predicted or not foreseen in the obligatory expenses. Therefore, there is no conflict in this dossier or in the whole decision-making process, for the budget allocation between a generalist (Executive) agenda and another particularist and individualist agenda (parliamentarians). According to Figueiredo and Limongi:

[...] expenditure groups which include compulsory expenditure [expenditure on staff and current expenditure] end up supplanting the appropriations provided for in the budget law, through the approval of supplementary credits throughout the budget year. It is therefore understood that the rate of implementation of such expenditure often exceeds 100% [data between 1996 and 2001]. Investment expenditure, on the other hand, has implementation

rates that are always lower than the amounts approved. (FIGUEIREDO and LIMONGI, 2008, p. 39).

In other words, the opening of additional supplementary credits (by decree), special credits (by ordinary law of initiative of the President) and extraordinary credits (by provisional measure) involves an institutional prerogative of the Executive Power, as well as the rest of the budget, in order to adjust the revenue variations during the LOA.

The current Constitution establishes that the Executive has the exclusive prerogative to initiate any and all legislation related to budgetary matters, which involves [...] PPA, [...] LDO [...] and LOA, and the so-called Credit Laws [additional] which are proposed throughout the year to meet variations in revenue and exceptional circumstances (FIGUEIREDO; LIMONGI, 2002, p. 313).

The second explanation, presented by Pereira and Mueller (2002 and 2004) and by the same authors with other co-authors (ALSTON et al., 2005, 2009), proposes that there are two conflicting agendas in the budget decision process: a particularist and distributivist agenda (pork) of the parliamentarians, guided by electoral rules that would stimulate an individualistic logic of performance in budget execution to benefit electoral bases, and a generalist agenda of the Executive, which would use its institutional prerogatives on the release of funds from amendments in budget execution as a “currency” to obtain individual cooperation from parliamentarians in votes of government interest. According to Pereira and Mueller:

[...] the existing rules provide the executive with tools to control the process in order to create a low-cost political “currency” that is extremely useful to be exchanged for political support from its coalition in Congress [...] budget rules affect results of the interaction between government and Congress [...] the Executive strategically uses budget execution as one of the most important bargaining instruments in negotiating congressional support for its governance (PEREIRA; MUELLER, 2002, p. 267).

And the same authors supplement their argument about the conflicting relationship between government and parliamentary agendas and the President’s ability to reward or punish parliamentarians by enforcing individual amendments:

It is the absence of synchronization between tax collection and expenditure that has allowed the executive to act strategically by making the appropriation of amendments contingent on the availability of resources. As a result, the executive has had extreme flexibility and discretion when negotiating with legislators and has not applied a homogeneous criterion when deciding which amendments to appropriate. We show evidence that Brazilian presidents reward those legislators who consistently vote for executive interests by appropriating their individual amendments to the budget and at the same time punish those who oppose the interest of the president by not executing their amendments (PEREIRA; MUELLER, 2004, p. 789-790).

In this approach to conflicting, generalist and particularistic agendas, the role of additional (mainly supplementary) credits is distinct from that presented earlier. In this case, it is an extension (an iteration) of the budget game that maximizes Executive Power (by asymmetry of information and institutional prerogatives) to obtain support from parliamentarians in exchange for non-contingency of individual amendments. According to the authors:

The budgetary game, however, does not end after the PLO has been approved by Congress and enacted by the president. The budget can still be changed after these stages through the additional credit mechanism, which allows new amendments that reallocate resources. This possibility makes the budgetary decision-making process effectively endless, turning it into a sequential game in which the executive and Congress interact on more than one occasion. As shown in the next section, the executive plays this game from a very favorable position compared to Congress, as it benefits from asymmetric information and institutional mechanisms that allow it considerable discretionary powers. Resources to be allocated as additional credits come mainly from cancellations of previous spending in the LOA, excess tax collection, and loans. Note that the executive has an informational advantage regarding the availability of these resources (ALSTON et al., 2009, p. 72).

The two explanations are accompanied by robust empirical evidence that seeks to demonstrate their hypotheses. However, they highlight distinct aspects and logic of the budget execution process. We do not have here data to corroborate or refute one of the explanations. However, in situations in the Executive and Legislative relationship where the support coalition is incorporated into government, the logic of a single agenda that is capable of accommodating individual electoral interests in programs determined by the government in conjunction with the coalition and all parliamentarians appears to have greater explanatory power in the budget decision-making process.

The rules of decision do not give full discretion to the Executive to carry out the parliamentary amendments. Evidence shows that parliamentarians from both the government and the opposition are contemplated, albeit to varying degrees, with the implementation of the amendments, which form public policy through programs approved jointly between parliament and government. In this case, the

logic of editing additional credits, especially supplementary ones, seems in fact to be more related to the accommodation of uncertain revenues (nominally increased by higher inflation and/or economic growth, and reduced by frustration of revenue in a recessive economic environment) rigid budget execution in which compulsory expenditure predominates. That is, the investment in the budget is deprived by additional credits to the obligatory expenses, affecting both the one proposed by the Executive and the one altered by the parliamentarians.

Given the government's and parliamentary relations in budgetary matters – and how much the Executive is prevailing in the reallocation of resources –, the additional credits of the period from 2011 to 2016 will be analyzed (in this case, only the supplementary and extraordinary, since *independent – at the moment of the opening* – of the Legislative)².

A cut will be made in recent years to evaluate the Executive's relationship with the Legislative (government and parliament), the preponderance of the government and the findings of the data collected.

2 THE FEDERAL GOVERNMENT SUPPLEMENTARY CREDITS FROM 2011 TO 2016

The illegitimacy of additional credits was argued to support the request and decision of the *impeachment* of former President Dilma Rouseff. In the sentence, the Federal Senate judged (for being the actor constitutionally competent for the task), based on the Opinion of Senator Anastasia, that,

[...] supported by fiscal targets set forth only by bills, the President of the Republic issued, in both 2014 and 2015, additional credit opening decrees that increased expenditures authorized by budget law. According to TCU, these acts were published without fiscal burden, that is, in a way incompatible with obtaining the goal in force at the time of its edition³.

As it has been said before, the bottom line lies in the Executive and Legislative budget relationship. In the last century, Americans faced interinstitutional budget conflicts similar to our current ones, like a tug of war being pulled between the Executive and the Legislative (sometimes the Executive preponderated, and in some others the Legislative). In our post-1988 constitutional reality, in keeping with the historical tradition, the Executive Power prevailed in the

² It is said here, "*independent – at the moment of opening – of the Legislative*" because: (a) in the case of supplementary, the LOA – law approved by the Legislative – authorizes the opening by decree of the President (without Legislative participation); (b) in the case of extraordinary cases, the Constitution guarantees the President the competence to be opened by provisional measures, and then submitted to the National Congress.

³ BRASIL. **Sentença do julgamento da Presidente Dilma Rouseff**. Available on: <<https://goo.gl/DE3sKK>>. Access on: January, 1st, 2017.

discussions of the public budget and entered the constitutional era of 1988 strengthened, concentrating much of the resource allocation decisions.

With the passing years, displacements occurred that obscured its prevalence. The Legislature increased its budgetary competence by amending the Constitution, creating governmental programs and actions, expenses related to tax revenue, and individual tax amendments (as provided for in Constitutional Amendment 86/2015). But the movement is pendular, changing the Legislative-Executive balance from time to time (as, for example, the Executive benefiting from the inclusion of article 167, §5, of the Constitution).

In September 2016, Law 13,332 was published, which modified the LOA of 2016. It was approved, in it, alteration of the limits for the opening of supplementary credits in some areas – from 10 to 20%. Such a measure grants greater budgetary powers to the Executive Power, withdrawing, for the relocations, the condition of approval by the Legislature Power.

The Message inserted in Draft Law PLN 3/2016 CN, which originated Law 13,332/2016, whose presentation was given by then President Dilma Rousseff, stated, for example, that it was proposed

[...] the extension to 20% (twenty percent) of the authorization for supplementation and cancellation of the actions listed in item 'a' of subsection I of article 4 of LOA-2016, since it is applicable to the largest number of budget actions without specific regulation. This percentage of 20% (twenty percent) had been authorized since 2013, and guaranteed greater flexibility for managers to adjust to the fiscal year, allowing better management of resources, especially in years of budget constraint⁴.

There is condescension of the National Congress. In LOA 2011 and 2012, the annulment percentage was 10%. In 2013, 2014 and 2015, 20%. In 2016, the year began with a more restrictive LOA but was loosened by granting greater decision-making powers and re-directing expenditures to the Executive Branch in order to authorize adjustments without submitting them to the Legislature.

In light of this finding, we decided to gather empirical data on the Executive and Legislative relationship with regard to additional credits, specifically the supplementary credits. We suspect that governments have been using too much of the instrument that, *a priori*, would only serve to supplement budgetary appropriations, but has been adopted for real reshuffles of the public budget without parliamentary participation.

⁴ BRASIL. **Projeto de Lei de Alteração da LOA PLN 3/2016**. Available on: <<https://goo.gl/qAc7ct>>. Access on: January, 1st, 2017.

All unqualified decrees⁵ for the opening of supplementary credits from 2011 to 2016 (until September 2016), with details, were searched. There are 344 (non-numbered) decrees for the opening of additional credits, transfers due to the extinction of organs or another reason, and article 167, §5, of the Constitution. We also raise, without going into details, the decrees from 1995 to 2010 (only to determine the amount of supplementary credit decrees).

The following information was compiled, which are presented in tables and graphs:

(1) Decrees for the opening of additional credits (including transfers by extinguishment of organs or other grounds – authorized by the Annual Budgetary Law – and of the authorization of article 167, paragraph 5 – added by Amendment 85):

- a) total number: 344 decrees between 2011 and 2016;
- b) total value: R\$ 1,018,896,201,952.00;
- c) quarter with additional credits, in reais: 3rd quarter of 2014 (R\$ 184,503,592,461.00);
- d) the main source of income is “cancellation of appropriations” (which demonstrates that the re-allocation of resources prevails);
- e) in 2016, until the date of conclusion of the research, there was no decree to open supplementary credit (there is only one for transfer).

Table 2 – Supplementary credits (plus transfers and article 167, §5, Federal Constitution) – in R\$

Year	Quarters				Total (Year)
	1st	2nd	3rd	4th	
2011	1,534,100,027	11,873,540,680	35,476,348,349	52,445,627,572	101,329,616,628
2012	618,742,832	78,341,778,627	30,304,015,397	83,069,698,189	192,334,235,045
2013		21,493,749,757	164,577,690,816	87,581,044,884	273,652,485,457
2014	2,016,837,158	19,809,100,395	184,503,592,461	122,076,518,929	328,406,048,943
2015		7,924,097,853	103,829,133,341	11,407,656,704	123,160,887,898
2016		12,927,981			12,927,981
Total	4,169,680,017	139,455,195,293	518,690,780,364	356,580,546,278	1,018,896,201,952

Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

⁵ According to Decree 4176/2002, “Article 4. Only decrees of a normative nature will have numbering, which will be given sequentially in continuity to the series begun in 1991”. (BRASIL, Decree 4,176, March 28, 2002).

Table 3 – Supplementary credits (and transfers and article 167, §5, Federal Constitution), except investment budget – in R\$

Year	Quarters				Total (Year)
	1st	2nd	3rd	4th	
2011	1,534,100,027	9,367,930,117	35,476,348,349	51,066,461,572	97,444,840,065
2012	618,742,832	77,841,588,789	30,270,315,397	79,360,511,357	188,091,158,375
2013		21,493,749,757	164,114,014,916	75,136,091,143	260,743,855,816
2014	2,016,837,158	14,993,054,395	184,503,592,461	118,056,694,748	319,570,178,762
2015		7,924,097,853	103,829,133,341	11,133,152,763	122,886,383,957
2016		12,927,981			12,927,981
Total	4,169,680,017	131,633,348,892	518,193,404,464	334,752,911,583	988,749,344,956

Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

Table 4 – Supplementary credits decrees (and transfers and article 167, §5, Federal Constitution)

Year	Quarters				Total (Year)
	1st	2nd	3rd	4th	
2011	2	20	25	43	90
2012	2	23	12	38	75
2013		10	18	45	73
2014	8	15	13	45	81
2015		2	16	6	24
2016		1			1
Total	12	71	84	177	344

Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

Table 5 – Supplementary credits decrees (and transfers and article 167, §5, Federal Constitution), except investment budget

Year	Quarters				Total (Year)
	1st	2nd	3rd	4th	
2011	2	16	25	40	83
2012	2	22	10	34	68
2013		10	14	39	63
2014	8	14	13	32	67
2015		2	16	5	23
2016		1			1
Total	12	65	78	150	305

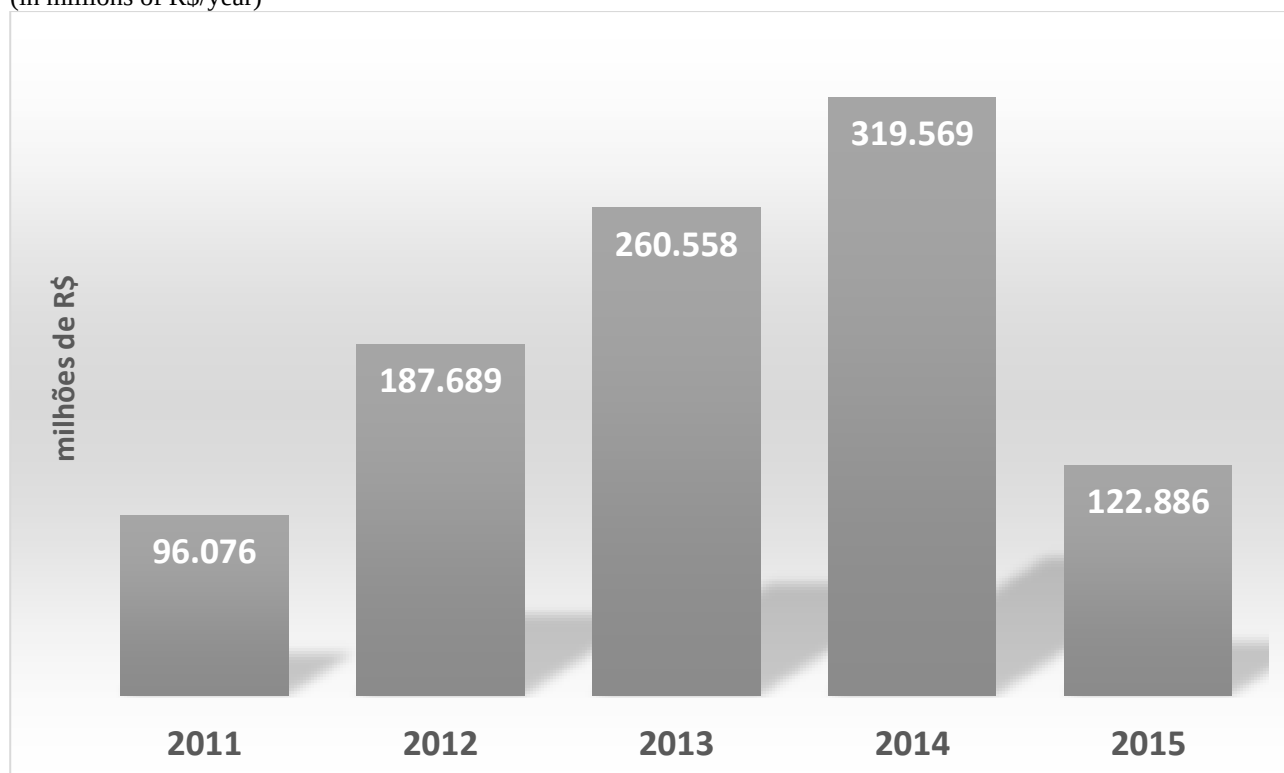
Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

Table 6 – Supplementary credits, except investment budget and transfers (by extinguishment of agency or other reason) – by sources of funds (in millions of R\$)

Resource Sources	2011	2012	2013	2014	2015	Total
Cancellation	42,423	92,074	31,796	71,810	25,159	263,262
Excessive collection	563	53	228	155	934	1,932
Excessive collection and cancellation	14,924	876	10,659	492	30	26,981
Financial surplus	3,587	1,297	12,639	819		18,343
Financial surplus and cancellation	23,485	76,425	26,068	214,218	56,923	397,120
Financial surplus, excessive collection	7,143	70		79		7,292
Financial surplus, excessive collection and cancellation	3,951	16,894	179,167	31,995	39,061	271,069
Others					779	779
Total	96,076	187,689	260,558	319,569	122,886	986,778

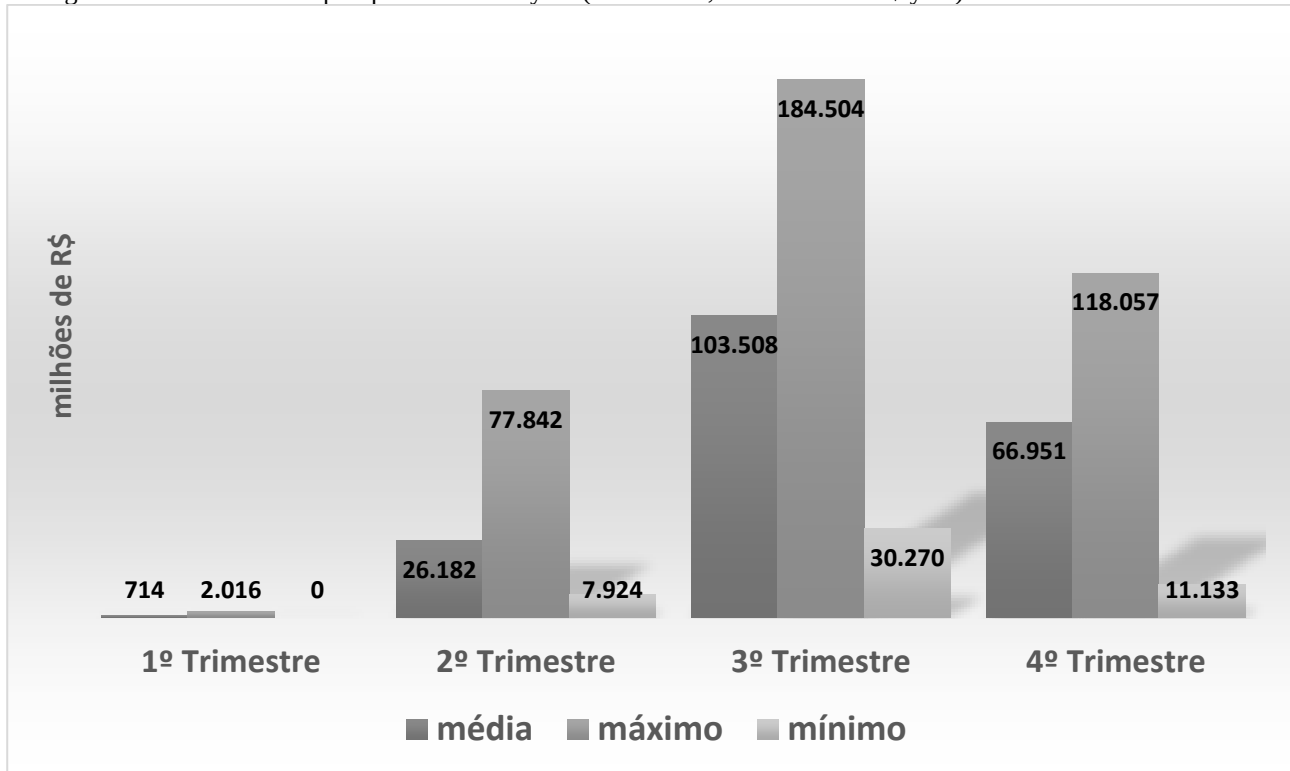
Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

Graph 1 – Supplementary credits, except investment budget and transfers (due to extinction of agency or other reason) – (in millions of R\$/year)



Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

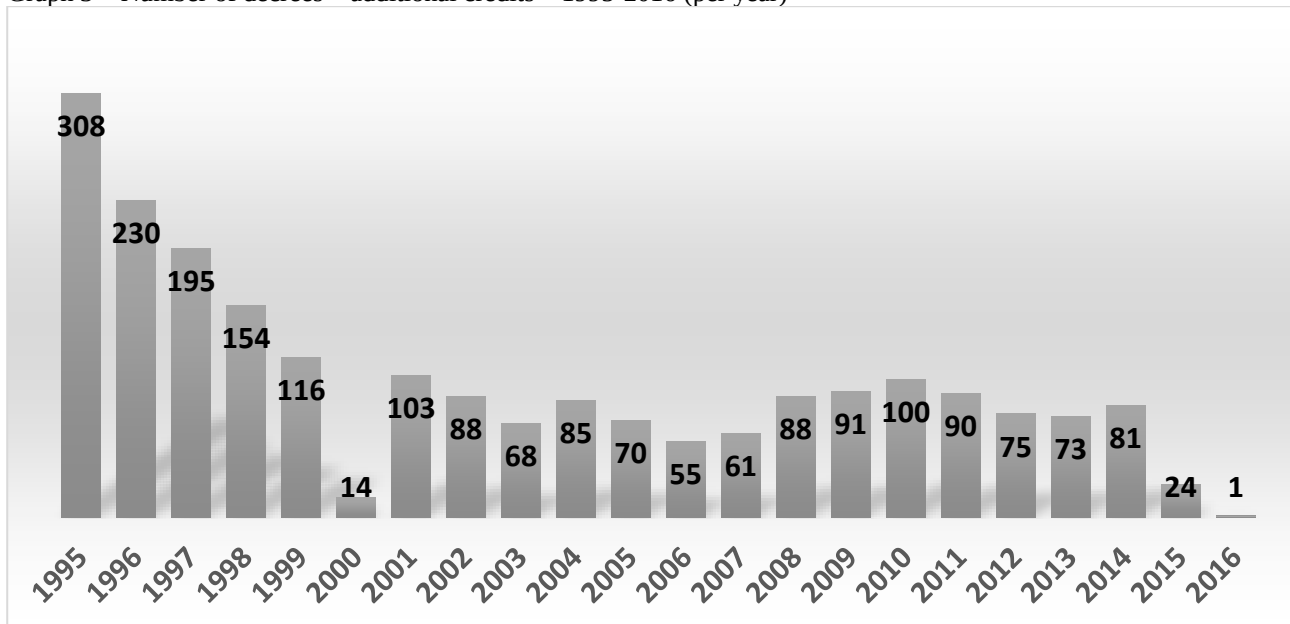
Graph 2 – Supplementary credits, except investment budget and transfers (due to extinction of agency or other reason) – average/maximum/minimum per quarter of each year (2011-2015, in millions of R\$/year)



Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

(2) From 1995 to 2016, the greatest number of decrees were concentrated between 1995 and 1998 (1995 with 308 decrees, 1996 with 230 decrees). From the Fiscal Responsibility Law, the annual number of decrees remained relatively stable (between 24 in 2015 and 100 in 2010).

Graph 3 – Number of decrees – additional credits – 1995-2016 (per year)



Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

In spite of not observing an excess in the number of decrees in the current governments (one every four or five days, on average), we must reflect on the values opened and reassigned by the Executive Power without participation or previous control of the Legislative. Increasing the percentage, as Law 13,332/2016 did, reduces Parliament’s participation in budget decisions, with the granting of legislative powers to the President of the Republic. It is a motion of confidence, which can be revised in the next budgets.

The data also reveal: (i) excess – in reais – of additional credits in the electoral year, combined with economic crisis, inflation and low growth, plus excess of compulsory expenses (3rd quarter of 2014); (ii) that most of the credits are actually re-allocation; and (iii) that in 2016 the fear prevailed, which made disappear additional credits opened by decree.

The scenario of out-of-control budget for additional credits is repeated in states and municipalities. For political reasons – and it could not be otherwise –, the Legislature grants budgetary freedoms for unilateral changes of the Executive, which seeks to accommodate the collection available to – especially – mandatory expenses, to the detriment of investments, in times of economic crisis.

3 THE EXTRAORDINARY CREDITS OF THE FEDERAL GOVERNMENT FROM 2011 TO 2016

The 1988 Constitution originally conferred strong legislative powers on the President, whose major tool is the interim measure. Although it has been limited by Constitutional Amendment 32, it remains a powerful legislative act with the force of law and also accelerates the legislative process within parliament.

As explained above, in budgetary matters, the legislative initiative belongs to the President of the Republic, and the legal process is the ordinary one (with some peculiarities). Ignoring this process cannot be by popular initiative, nor by legislative delegation, and, as a rule, it is not possible to adopt provisional measures. The President concentrates great budgetary power, and Brazil does not escape the rule in Latin America. According to Carlos Bologna, Henrique Rangel and Flávio Corrêa (2015, p. 123),

in general, Latin America is historically characterized by a state organization which attributes generous constitutional powers to the figure of the president. An analysis of the current Latin American constitutions, however, reveals that some of these countries stand out: Peru, Brazil and Ecuador. These three countries concentrate strong powers on the president.

Concerned to Financial Law, the authorization of provisional measures is only possible for the opening of extraordinary credits. The constitutional permissive, however, is conditioned to *unforeseeable and urgent* expenses, such as those arising from *war, internal commotion and public calamity*. The requirement is not from 1988, but existed prior to the creation of provisional measures, by Law 4,320/1964. The writing is clear. Error planning and budget makeup are not *war, internal commotion nor public calamity*. Even under the old letter of Law 4,320/1964 – *war, internal commotion, public calamity* – no other sense can be fought.

On December 18, 2007, the then President Luiz Inacio Lula da Silva opened extraordinary credits by Provisional Measure 405, “in favor of the Electoral Justice and various organs of the Executive Branch, in the total amount of R\$ 5,455,677,660.00”. He indicated necessary resources – unnecessary practice, because the legislation does not require indication of source of resources in extraordinary credits.

Faced with non-compliance with the constitutional requirements, in March 2008, the opposition (PSDB), the Direct Action of Unconstitutionality 4048 was proposed (Rapporteur, Minister Gilmar Mendes), which obtained a precautionary measure. In the decision, the Supreme Court ruled that there is “possibility of submitting budgetary rules to abstract constitutionality control” and that

[...] in addition to the requirements of relevance and urgency (article 62), the Constitution requires that the opening of the extraordinary credit can be made only to meet unforeseen and urgent expenses. Contrary to the requirements of relevance and urgency (article 62), which are subject to a wide margin of discretion on behalf of the President of the Republic, the requirements of unpredictability and urgency (article 167, §3) receive of the Constitution. The semantic contents of the expressions “war”, “internal commotion” and “public calamity” are vectors for the interpretation/application of article 167, §3 combined with article 62, paragraph 1, item I, letter ‘d’ of the Constitution. “War”, “inner commotion” and “public calamity” are concepts that represent factual situations or situations of extreme gravity and unpredictable consequences for public order and social peace, and thus require, with due urgency, the adoption of special and extraordinary measures⁶.

In this sense, in the understanding of STF, as Provisional Measure 405 served to “provide current expenses”, the instrument was distorted. However, this is the competence – even if considered unconstitutional – to relocate and increase budget allocations, with a concentration of powers in the President. The competence is exercised with greater force in periods of economic crisis – when there is a lack of public revenue – and in the electoral period in which difficulties to maintain expenses are faced.

In order to determine the effects of STF’s decision on the Executive’s performance, the data on the mandate of President Dilma Rousseff (2011-2016) and President Michel Temer (2016) were collected for empirical verification. The following situation is shown here in tables and graphically:

Table 7 – Extraordinary Credits (edited by Provisional Measure-PM) – in R\$

Year	Quarters				Total (Year)
	1st	2nd	3rd	4th	
2011	780,000,000	574,000,000		994,111,700	2,348,111,700
2012	40,000,000	8,619,851,638		49,932,142,975	58,591,994,613
2013	361,368,057	6,901,325,346	4,619,486,253	1,978,600,000	13,860,779,656
2014		5,100,000,000	1,304,652,399	27,717,120,289	34,121,772,688
2015	74,918,975,280		9,820,639,868	39,848,220,004	124,587,835,152
2016	4,578,341,651	3,230,000,000	2,343,336,561		10,151,678,212
Total	80,678,684,988	24,425,176,984	18,088,115,081	120,470,194,968	243,662,172,021

Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

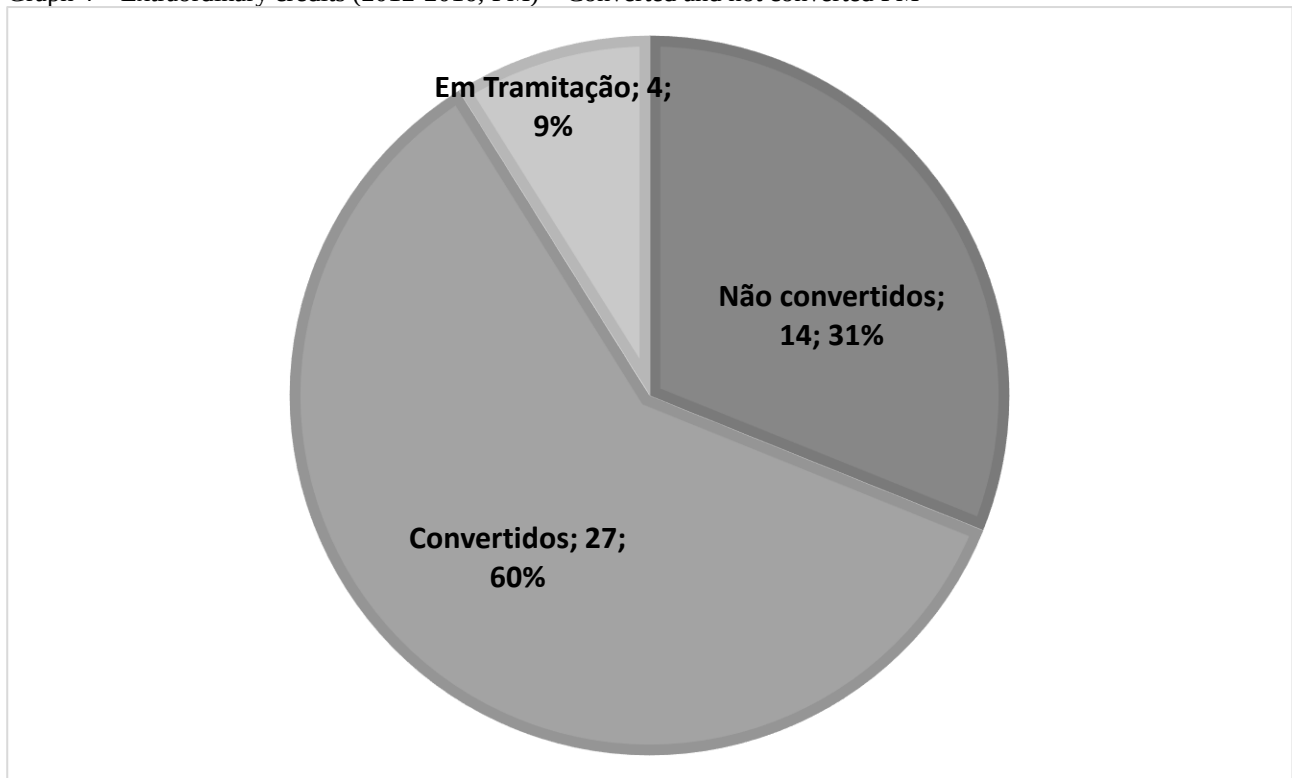
⁶ BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade 4048 (ADI 4048)**. Relator (na liminar) Min. Gilmar Mendes. Julgamento da liminar em 14 de maio de 2008.

Table 8 – Amount of Provisional Measures-PM (Extraordinary Credits)

Year	PM (Extraordinary Credits)			
	Not Converted	Converted	On Processing	Total (Year) ^o
2011	1	4		5
2012	2	7		9
2013	2	6		8
2014	5	1		6
2015	1	5		6
2016	3	4	4	11
Total	14	27	4	45

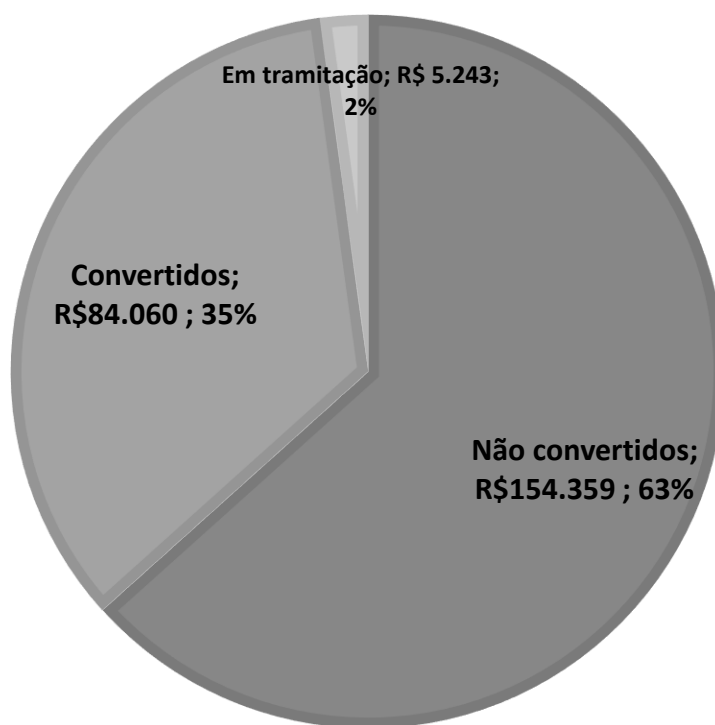
Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

Graph 4 – Extraordinary credits (2012-2016; PM) – Converted and not converted PM



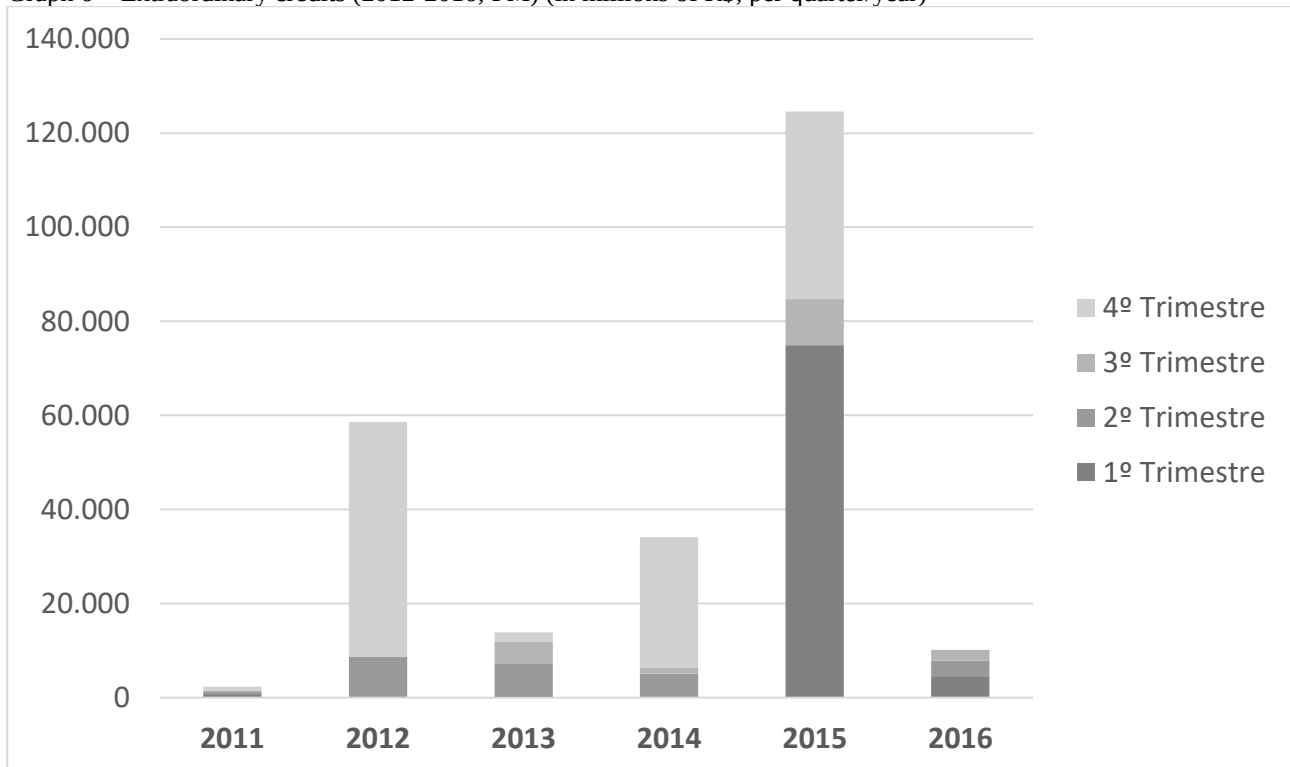
Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

Graph 5 – Extraordinary credits (2012-2016; PM) – Converted and not converted PM (in millions of R\$)



Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

Graph 6 – Extraordinary credits (2012-2016; PM) (in millions of R\$, per quarter/year)



Source: BRASIL. Planalto: Portal da Legislação. Available on: <<http://www4.planalto.gov.br/legislacao>>. Access on: September, 1st, 2016. It includes additional credits – supplementary, special and extraordinary. Data organized by Dirpol/PPGD/UFPR researchers.

- (a) Between 2011 and 2016, 45 provisional measures were issued that opened extraordinary credits.
- (b) The total amount was R\$ 243,662,172,021.00.
- (c) In reais, the greatest amount was observed in 2014: R\$ 124,587,835,152.00 (more than half of the value in the analyzed period).
- (d) The quarter with the largest amount, in Reais, was the 1st of 2014: R\$ 74,918,975,280.00.
- (e) Summing up the amounts of the quarters of each year, the fourth quarter (from 2011 to 2016) had the highest extraordinary credits: R\$ 120,470,194,968.00.
- (f) Most (not in absolute numbers, but in pecuniary) of the provisional measures were not converted into law.

Given these data, we can, in preliminary examination, affirm:

(a) The legislation does not require an indication of the source of extraordinary appropriations by means of a provisional measure, which may lead to a *parallel budget* (possible to increase total expenditure), with few subsequent concerns favoring irresponsible governments⁷.

(b) Extraordinary credits whose provisional measure has been promulgated in the last four months may be reopened, within the limits of their balances, in the subsequent fiscal year (article 167, §2, Constitution). Such authorization leads to extraordinary credit openings in the last four months, in order to super-forecast revenue from the budget for the subsequent financial year. The accumulation, in Reais, was observed in the last quarter of each year, adding up all the last quarters.

(c) Extraordinary credits may have been used in 2014 to boost the scarce budget, mainly due to the election year, the economic crisis, inflation and low economic growth. For Rafael Campos Soares da Fonseca,

[...] it is interesting to observe the peaks of PMs use in the years 2010 and 2014, due to the simultaneous state and federal elections in the period in question. Therefore, there is reason to suppose an effort to present a governmental performance below the economic capacity of the State as foreseen in the period of elaboration of the public budget in electoral year, without representing, however, efficiency gain, but only greater availability of resources (FONSECA, 2016, p. 130).

(d) In most of the provisional measures, the requirements defined in the Federal Constitution and delimited by the Federal Supreme Court were not observed (for example, there is “reassignment of the Federal Highway Police through the purchase of motorcycles”, in Provisional Measure 573/2012), which indicates, even more, the confirmation of the hypothesis (extraordinary credits are also adopted to contain scarcity of public revenues).

4 CONCLUSION

It remains important to re-evaluate how public finances should be addressed in the years to come. Undoubtedly, one must strive for the organization, balance and rectitude of government accounts. Certainly, however, financial mechanisms are adopted in times of crisis, albeit in deviations from the purposes originally proposed (or interpreted by STF).

In the case of additional credits (mainly supplementary and extraordinary, since they were independent at the beginning of the Legislature), this mechanism is available to the President for

⁷ “Besides the appropriation of the State by private interests, another phenomenon that compromises the proper functioning of democratic institutions in Brazil is populism. It is a form of power based on the direct and emotional relationship of the political leader with the masses, using a demagogic discourse and taking advantage of the material and cultural poverty that allows this kind of manipulation” (GASPARDO, 2015, p. 94).

quick and quiet resource transfers (without provoking the Legislative), despite having the concurrence of this and other powers, at moments that did not involve political, economic and legitimacy crises of the presidency (simultaneously). We are aware of the use of the additional credits before 2015. We also know the institutional consequences and decisions of the congress in 2016, based on the opinions of the control bodies, such as the Federal Audit Office and the Federal Public Ministry. As in the future, the management of the budget in the face of fluctuations in revenues and the increase of obligatory expenditures (inexorable, even before the approval of Constitutional Amendments 94 and 95/2016) will be handled by the legal and political world is unknown. Much more than a research agenda, the big question is whether we will return to the pre-2015 world or whether what will happen in 2016 will resonate with Congress, the Courts of Accounts and other budget control agencies in the near future. Based on the data we have collected and studied, it becomes clear that the federal governments are acting in an abusive manner in the treatment of Brazilian public finances.

Without futurology, and understanding that the annual budget will always be open to changes for additional credits, we will deepen the study of the past and maintain the legal and political science scrutiny on future budgetary events, with the expectation that the institutions and Powers will have as north the guarantee of democracy and predictability of public finances.

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