

The confirmation hearings of appointees to the Brazilian Federal Court of Accounts post-1988: appointment power and horizontal accountability

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Introduction

This article contributes to the ongoing debate on the appointment process for key state decision-making positions by examining the confirmation hearings of candidates appointed to ministerial roles within the Brazilian Federal Court of Accounts (TCU). The analysis adds to the broader discussion on appointing public officials, including Supreme Federal Court (STF) justices, ambassadors, and the president of the Central Bank of Brazil. Despite the growing influence of TCU audits on executive decisions, the nomination process for TCU ministers has not yet been thoroughly examined (Grin, 2020).

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The appointment of TCU ministers involves both formal stages – nomination by the President, a Senate confirmation hearing, and a Senate vote following the hearing – and informal stages, such as the political negotiations likely occurring before and after the President’s nomination. This study focuses on the confirmation hearings, given their significance as highlighted by recent literature and the availability of official transcripts.

This study aims to understand what the confirmation hearings reveal about the broader appointment process. These hearings disclose preferences and conflicts that are not evident in the Senate vote. They shed light on the ministerial profile favored by senators – particularly appointees who are experienced politicians with a strong “political sensitivity.” The hearings also reveal the topics that interest senators in the context of horizontal accountability and expose tensions between senators and the TCU, particularly regarding the court’s autonomy and responsiveness to Congress. In this sense, TCU ministerial hearings are significant *power loci*, comparable to those in the Central Bank of Brazil and foreign relations appointments.

The focus of this study is the debates during the Senate hearings of TCU ministerial nominees. According to the 1988 Constitution, TCU ministers are alternately appointed by the President and Congress. Appointees nominated by the President and the Senate undergo a confirmation hearing, whereas TCU ministers appointed by the Chamber of Deputies do not.

Content analysis was chosen as the method for this study because the discussions during the hearings reveal preferences and conflicts not apparent in the Senate vote. Approval in the Senate does not necessarily indicate the absence of prior negotiations (Llanos; Lemos, 2013). The confirmation hearings represent the only public forum within the presidential nomination process where conflicts between the key actors and their perspectives can be analyzed.

This study is justified for three main reasons. First, the saying “personnel is policy” suggests that confirmation hearings are crucial *loci* of power, positioning TCU as a prominent agency of horizontal accountability. In presidential systems, especially in Brazil, the President’s appointment power is substantial due to three factors: the substantial number of positions, the President’s political role in forming government coalitions, and their organizational influence over policy decisions (Borges; Coêlho, 2015).

The administration of President Jair Messias Bolsonaro (2019-2022) stressed the profound impact of strategic appointments on public policies. Across various government sectors – foreign relations, environmental policy, social welfare, and the preservation of Black cultural expressions, to name a few – the President’s appointment of leaders with views contrary to the prevailing norms of recent decades has been a key mechanism for policy change. Even without altering the legal frameworks governing these areas, President Bolsonaro managed to drive significant shifts in agency actions, including altering Brazil’s international stance, facilitating deforestation and illegal mining, reversing protections for women, and denying the existence of racism (Peci, 2021).

Second, confirmation hearings for presidential nominees to positions like Supreme Court Justice, President of the Central Bank of Brazil, and TCU Minister, commonly known as “*sabatinas*,” have emerged as critical sources of insight into the disputes and negotiations surrounding these appointments (Albuquerque; Belieiro Júnior, 2019). While these hearings do not fully explain other stages of the process – such as the President’s appointment, the Senate vote, or the political bargaining involved – they do, as this article demonstrates, reveal that senators’ preferences are influential in the President’s decision-making.

The third justification for this work is the significant role of the TCU in Brazil’s horizontal accountability system, defined as the network of state agencies with legal authority and capacity to conduct everything from routine oversight to imposing legal sanctions on state agents or organizations (O’Donnell, 1998). Although oversight institutions have shown limited success in achieving judicial accountability (Praça; Taylor, 2014), the literature highlights their essential role in constructing an integrity system, with the TCU standing out for its autonomy, technical expertise, and influence (Filgueiras, 2018).

This article is structured into five sections, including this introduction. The next section provides a literature review on appointments and confirmation hearings. The third section outlines the methodology. The fourth section presents the results of the content analysis of the hearings, subdivided into three sub-sections discussing the key findings: that the hearings are significant venues for political debate on horizontal accountability, that senators have distinct visions for the TCU’s role, and that there is compelling evidence of political negotiations preceding the hearings. The fifth and final section presents the conclusions.

Appointment power, confirmation hearings, and external control: the selection of Federal Court of Accounts Ministers by the President and the Senate

In Brazil, the President's appointment power is particularly significant due to the large number of positions subjected to this selection process (around 22,000), which is notably higher than in other countries (Peci, 2021, p. 29). This power is further amplified considering these positions' crucial role in government decision-making (Lopez; Moreira, 2022) and in negotiations involving the executive and legislative branches during the formation of the government coalition (Abrucio; Loureiro, 2018, p. 25).

Appointment power is one of the President's primary tools in a presidential regime, yet it has been underexplored in Brazil, largely because of the traditional association in national literature between political appointments and clientelism, reducing appointments to mere "bargaining chips" in coalition-building processes (Loureiro; Olivieri; Martes, 2010, p. 104). However, recent studies have begun to investigate the profiles of appointees (D'Araujo; Petek, 2018; D'Araujo; Ribeiro, 2018) and their roles in coalition formation (Borges; Coêlho, 2015; Lopez; Moreira, 2022).

Despite these advances, few studies have focused on the President's appointment power as a mechanism for political control over the bureaucracy (Olivieri, 2011; Wood; Waterman, 1991) and for shaping public policy. The "personnel is policy" (Lewis, 2009, p. 20) or "personnel power," highlights how the power to appoint public leaders (with or without Senate confirmation) allows the President to imprint their policy vision on state agencies through the decisions these leaders make – such as hiring subordinates, planning and budgeting, and drafting legislation or regulatory measures.

A particularly critical aspect of this appointment power involves a small number of positions with outsized importance due to their roles in maintaining checks and balances among the branches of government and in defining key public policies. Leaders of executive agencies (such as the Central Bank, regulatory agencies, and the Ministry of Foreign Affairs), the judiciary (including higher courts and the Supreme Federal Court – STF), and the legislature (such as the Federal Court of Accounts – TCU) are appointed only through the combined actions of the executive and legislative branches: the

President appoints, and the Senate either confirms or rejects the appointment. The TCU is unique because the President nominates only one-third of its members, with the Senate and the Chamber of Deputies responsible for selecting the others.

Just as appointments to thousands of executive branch positions involve negotiation with the legislature during coalition formation, it is implausible to assume that the selection of these more critical positions does not also involve negotiations with Congress. This is especially true given the Senate's crucial formal role in confirming or rejecting nominations, as well as its responsibility for conducting public hearings to question nominees.

The hearings represent the "visible" part of this process, which is the focus of this analysis. The "invisible" part likely includes the negotiations that precede the President's formal appointment (a phenomenon known as a "trial balloon," where potential nominees are "tested" with public opinion and key political actors, such as senators and members of the relevant agency, before the appointment) and the negotiations that occur between the formal nomination and the Senate vote (which probably involve party negotiations and the "hand-kissing" process, in which the nominee personally meets with senators to seek their support).

In the theoretical debate on presidential nominations approved by the Senate, two main "theses" emerge: the presidential anticipation thesis and the presidential dominance thesis. The anticipation thesis posits that the President builds consensus with political actors before making a formal appointment, while the dominance thesis suggests that the President can impose their preferred candidate on other actors (Llanos; Lemos, 2013, p. 78). Although analyzing the hearings alone cannot definitively determine which thesis is correct, the evidence leans towards supporting the anticipation thesis.

Brazilian literature has increasingly suggested that the presidential anticipation thesis likely holds true. The case of the TCU, though not previously examined, appears to align with this theory, as certain aspects of the hearings indicate.

Studies on these hearings reveal that they are a significant locus of political dispute, even though most presidential nominations are ultimately approved. While the Brazilian Senate has not rejected any of the President's

nominations for the position of Supreme Federal Court (STF) justice in recent decades, this does not mean it merely rubber-stamps decisions made solely by the President. Instead, the President typically presents a candidate only after extensive negotiations with senators, political parties, and other influential actors (such as other courts within the judiciary). This suggests that the anticipation thesis prevails over the dominance thesis (Llanos; Lemos, 2013).

A recent analysis of the profiles of 35 STF justices appointed between 1988 and 2021 revealed that few had close personal or political ties to the President. This finding suggests that factors beyond the President's preferences influence these appointments, thereby weakening the dominance thesis (Arantes; Martins, 2022).

Recent studies have not directly examined the process where the President consults or anticipate nominations with the Congress. Instead, they have focused on the profiles of those approved and the debates that take place during the confirmation hearings. This highlights the challenges of analytically and methodologically accessing the “consensus-building” phenomenon, as it is not publicly transparent. Nevertheless, these studies emphasize available materials, such as hearing transcripts, appointees' resumes, congressional votes, and their formal characteristics, all of which reinforce the anticipation thesis. Evidence from TCU hearings also points to prior negotiations, as will be discussed later.

A study on the confirmation hearings for the position of President of the Central Bank of Brazil between 1995 and 2010 (during the administrations of President Fernando Henrique Cardoso and President Luiz Inácio Lula da Silva) demonstrated that these hearings are an important arena for political debate. Senators' actions during these sessions reflected the macroeconomic conflicts of the time (Albuquerque; Belieiro Júnior, 2019, p. 40). This shows that, within the limitations of the hearing process, senators fulfill their role in exercising parliamentary oversight over the President's nominations, even though they cannot directly influence the nominee's actions once in office.

Similarly, an analysis of all ambassadorial confirmations by the Senate between 1988 and 2019 indicates that Congress does have an impact on foreign policy. The Senate played a decisive role in two notable cases: it rejected President Dilma Rousseff's nomination of Guilherme Patriota for ambassador to the OAS

in a vote in 2015, and it “prevented” President Jair Bolsonaro’s nomination of his son Eduardo Bolsonaro for ambassador to Washington in 2019 (Santos; Lopes, 2023, p. 24).

The rejection vote in the Senate was the only one of its kind to date, and the conflicts during the hearing indicated that the vote would not be “smooth” – with the decision hinging on a margin of just one vote. The President’s decision not to nominate certain individuals whose names had been floated in the press (a “trial balloon,” as mentioned before) serves as one method of political clearance. This involves a semi-formal and relatively transparent process in which the President’s potential appointees are vetted and negotiated with the congressional committee responsible for their approval. During this process, the candidate’s personal and professional credentials are assessed by the executive and discussed with Congress (Mackenzie; Shogan, 1996; Olivieri, 2010).

This case illustrates a moment when Congress exerted its influence behind the scenes, measurable through variations in the flow, sequence, and timing of the appointment process within Congress (Inácio; Meneguim, 2014, p. 10). Lengthy appointment processes often indicate extended consultations, negotiations, or bargaining between the President and senators to secure agreement on nominees (Lemos; Llanos, 2008), as well as Congress’s “power to procrastinate” (Carpenter, 2003 *apud* Santos; Lopes, 2023, p. 8). Analyzing the interval between nomination and confirmation, along with the ideological or partisan divides between the executive and Congress, is therefore pertinent (Hollibaugh; Rothenberg, 2015, p. 283).

Although the process for appointing TCU ministers is formally similar to that for appointments made by the President to other bodies, such as the STF and the Central Bank of Brazil, it is crucial to consider the unique characteristics of the TCU. This court is independent of the executive, as it is linked to the legislative branch. However, it is autonomous in relation to the legislative branch, enjoying exclusive powers and broad institutional independence guaranteed by law and tradition. TCU is supported by a long-established, highly qualified bureaucracy that effectively “runs” the agency (all TCU employees, except for ministers, are hired via competitive hiring process) (Medeiros; Goellner; Koga, 2023).

Since the 1988 Constitution, there has been an incremental process of change within oversight institutions, which have gained greater political and managerial significance in public policies (Grin, 2020; Loureiro; Teixeira; Moraes, 2009; Medeiros, 2021). Exogenous factors contributing to the expansion of the TCU's capabilities include the creation of democratic and bureaucratic control mechanisms, the increased role of the state in public policies, and changes in Brazil's fiscal regime (Filgueiras, 2018; Loureiro; Teixeira; Moraes, 2009).

Endogenous processes within the TCU include the expansion, optimization, and accumulation of organizational and administrative structures, such as the creation of external control secretaries in the 1990s and their thematic specialization in 2013, as well as budget increases and a rise in operational audits based on sectoral policies (Grin, 2020, p. 39).

The characteristics of the TCU's bureaucracy are central to this process of increasing the court's administrative and analytical capabilities: a stable technical staff, high levels of training and remuneration (above the federal public service average), budgetary stability (with only upward changes in revenue), and autonomous administrative structures, including the power to define and interpret norms on policymaking. The TCU's bureaucracy has thus been empowered to intervene throughout the public policy and management process, exerting significant political influence (Medeiros, 2021; Medeiros; Goellner; Koga, 2023).

There are indications that the TCU bureaucracy, as an autonomous and politically organized group, influences both the routine operations and leadership composition of the agency. This bureaucracy's administrative and regulatory autonomy is reflected in the decisions and recommendations made by its secretaries on public management. These decisions do not seem to be heavily influenced by direct political-partisan pressures, despite the political nature of the appointment process (Fonseca, 2019, p. 32).

Finally, under the 1988 Constitution, the TCU bureaucracy gained the authority to appoint two ministers, who must be selected from within the agency's own ranks. As will be discussed further, there are indications that this bureaucracy plays a role in the political process of negotiating appointments for positions nominated by the President and Congress.

Just as the hearings for Central Bank directors reveal the intersection of political and macroeconomic conflicts (Albuquerque; Belieiro Júnior, 2019), the hearings for TCU ministers highlight the relationship between Congress and the court concerning the auditing of accounts and oversight of public policies. This dynamic is particularly evident in the perceptions and expressions of senators, who, together with deputies, are responsible for the external control of the federal government, supported by the TCU.

Methodology

Content Analysis, following Bardin (2016), was employed to perform a preliminary analysis using the free software Iramuteq. This analysis revealed that the most frequently mentioned terms in the confirmation hearings were, in Portuguese, “*controle*” (control/accountability), “*União*” (Union, referring to the federal government), “*parecer*” (opinion/report), and “*fiscalização*” (monitoring/supervision),” all of which relate to Congress’s external oversight role through the Federal Court of Accounts (TCU). However, this initial identification was insufficient for a comprehensive understanding of the discussions and their implications. Therefore, a qualitative analysis was carried out by thoroughly reading all the texts, which enabled us to address the research questions: what is the debate on horizontal accountability and how does the appointment process work?

The study corpus comprises the transcripts of debates held during the hearing sessions. All available confirmation hearings were examined from the enactment of the 1988 Constitution (which introduced mandatory hearings) up to July 2023, the date of the most recent TCU ministerial appointment. The transcripts were retrieved from the Senate’s official website.

Prior to the 1988 Constitution, the President appointed all nine TCU ministers, who were then subject to Senate approval without submitting to a hearing. Since October 1988, the President’s appointment authority has been reduced to three of the nine positions, with the remaining six positions appointed by Congress under Article 73 of the Constitution, reversing the longstanding practice of presidential appointments (Speck, 2000). Additionally, the President faces further constraints: for two of these three appointments, they must select candidates from within the TCU staff, alternating between an

auditor and a prosecutor from the Public Prosecutor's Office within the TCU. According to the court's internal regulations, the TCU ministries prepare a list of three candidates for the President, based on seniority and merit criteria.

Throughout the 1990s, there was significant contention over the order of appointments (whether by the Chamber of Deputies, the Senate, or the President). This dispute was resolved through various regulations and an unconstitutionality action before the Supreme Federal Court (STF) (Brasil, 1992, 1993). In 1999, it was determined that when a vacancy arose due to the death, resignation, or retirement of a minister, the new appointee would be selected based on the origin of the nomination of the outgoing minister.

From the enactment of the 1988 Constitution up to July 2023, there have been 21 TCU ministerial appointment processes: 6 nominations by the President, 8 by the Senate, and 7 by the Chamber of Deputies. A detailed list of these appointments is provided in Table 1, in the next section.

TCU ministerial hearings differ from those for other positions in that only appointees by the President are required to undergo a confirmation hearing, as stipulated by Article 52, III, (b) of the Federal Constitution. Nevertheless, the Senate follows the same procedure for its own appointees, conducting a hearing in the Senate's Economic Affairs Committee (CAE).

During the period analyzed, 14 confirmation hearings took place: 6 for ministers appointed by the President and 8 appointed by the Senate. Due to the unavailability of transcripts for three sessions, we examined 11 hearings – 5 Presidential nominees and 6 Senate nominees. Among the Presidential nominees, 3 were selected from the list prepared by the court itself (civil servants), and 2 were freely appointed members.

The transcripts available appear to capture the full content of the questions posed (since recordings were not accessible). There are occasional references to inaudible parts of speeches, typically indicating off-microphone interjections rather than questions directed at the appointees. No significant gaps in the dialogue were noted during the transcript review.

Content analysis provides a framework for interpreting the meanings embedded in both textual and verbal communication by systematizing various indexes. It enables us to decompose texts into their component parts to better understand and rationalize their meanings (Pinheiro; Calixto; Cavalcante, 2014).

The analytical method was conducted as defined by Bardin (2016, p. 125), including the stages of pre-analysis, material exploration, and result treatment with inferences and interpretations. In the pre-analysis stage, we conducted a “floating reading” of all hearing transcripts. This initial review allowed us to grasp the argumentative dynamics, noting that senators’ questions predominantly drove the discourse over nominees’ responses and other speeches. It also helped identify recurring themes and indexes related to the TCU’s work.

During CAE sessions, the questioning procedure was consistent: the rapporteur presents the report, the appointee introduces themselves, senators ask questions, and the appointee responds. For analytical purposes, these statements were categorized into four distinct groups:

Group 1: The rapporteur senator presents the committee with an opinion on whether the appointee’s name should be approved.

Group 2: The appointee delivers a speech introducing themselves to the committee.

Group 3: Senators ask the appointee a series of questions.

Group 4: The appointee answers the senators’ questions.

The majority of the content, in terms of the amount of text, consisted of the senators’ questions (group 3). From an analytical perspective, this block was the most significant for addressing the research question concerning the appointment process and horizontal accountability. It revealed how senators question nominees and their views on the TCU’s performance in aiding Congress with external control over the executive.

On average, senators’ questions accounted for about two-thirds of the transcript pages, with the remaining content being divided relatively equally between the rapporteur’s speech and the appointee’s remarks. Transcripts typically ranged from 20 to 30 pages. Confirmation hearings involving civil servants appointed by the President from the list prepared by the TCU itself were generally shorter, with fewer questions (up to 10 pages long). One of the longest hearings was that of President Jair Bolsonaro’s appointee in 2020, which extended to just over 40 pages and featured notable deviations from the usual format.

Only the content of group 3 (senators' questions) was indexed for this analysis. A total of 122 questions were identified in the 11 confirmation hearings examined. It was possible to distinguish 139 "contents," separated across four indexed categories. A "debate" between senators and appointees is unusual. Therefore, the 122 questions represent the speech of each senator in the hearings. A question may address multiple contents, which explains the total number of contents exceeding the number of questions. The four index categories were as follows:

- a) TCU's operation: Questions related to the TCU's operational activities.
- b) Laudatory content: Praise related to the appointee's character, reputation, and professional history.
- c) Post-appointment expectations: Requests or recommendations on how the appointee should perform their duties.
- d) Challenge: Questions indicating that the appointee may not meet the qualifications for the position.

In the second stage of the content analysis, these categories were used to classify the senators' statements. The classification provided a detailed exploration of the material, and the results will be presented in the following section.

Statements related to procedural points of order (regarding the moment the senators can vote, decisions on whether questions are asked separately or combined, among other procedures) and the appointees' speeches (which were very formal, including descriptions of the TCU's history, activities, and legal aspects) were not indexed as these elements did not contribute to the research question. Points of order, for example, typically occupy about half a page per hearing and usually involve minimal conflict among senators.

The number of senators speaking or their participation in multiple hearings was not quantified. Few senators attended more than one hearing, with Senator Eduardo Suplicy being notable for his frequent attendance and focus on technical issues related to external control. Occasionally, deputies participate in hearings, primarily to praise the appointee, and their speeches were counted. However, senators are responsible for the majority of speeches.

Senators' questions were also categorized by topic. Four major topics were identified:

1. Audited entities or programs
2. The court's institutional efficiency
3. Inspection of public works
4. Relationship between the TCU and Congress

The next section explores how the senators' focus on these topics has shifted over time. Notably, the first three topics appeared in all confirmation hearings, while the fourth emerged only after 2008. Additionally, there has been a shift in the nature of senators' speeches from praise to criticism of the TCU, particularly regarding the fourth topic. The third stage of content analysis will involve interpreting these findings and drawing inferences based on the reviewed literature.

The confirmation hearings of appointees to the Federal Court of Accounts: The profile desired by Senators and views on external control

Although our study did not delve deeply into the nominees' profiles, a preliminary examination reveals some trends. During the analyzed period, Presidents nominated, in addition to the required TCU employees, the following individuals: Olavo Drummond (appointed by President Fernando Collor de Mello), a retired public prosecutor and former member of the Court of Accounts of the State of São Paulo (TCE/SP); José Múcio (appointed by President Lula da Silva), who was a politician; and Jorge Francisco (appointed by President Jair Bolsonaro), a legislative advisor.

The Chamber of Deputies has consistently appointed professional politicians, typically federal deputies with significant roles in legislative committees at the time of their nomination. Conversely, the Senate has predominantly appointed senators or former senators. However, in 2007 and 2014, the Senate nominated career congressional employees: Raimundo Carreiro (a legislative analyst and general secretary of the board during his nomination) and Bruno Dantas (a member of the Senate's legislative advisory staff). The

hearings did not provide insights into why civil servants were chosen instead of senators in these instances.⁴

The confirmation hearings serve to ensure that nominees meet the requirements stipulated in Article 73 of the Federal Constitution, which are:

- a. Brazilian citizenship
- b. Age (between 35 and 70 years)
- c. Over ten years of professional experience in the relevant fields (legal, accounting, economic and financial, or public administration)
- d. Highly regarded for their expertise in the relevant fields (legal, accounting, economic and financial, or public administration)⁵
- e. Moral integrity and an unblemished reputation.

The following table presents the names of all 21 ministers appointed from the enactment of the 1988 Constitution until July 2023. It includes the nominating institution (and, for Presidential nominations, whether the President had to choose among TCU civil servants or was free to appoint anyone meeting the legal criteria), the year of nomination, the Senate vote (Y = in favor, N = against, A = abstentions), and the availability of a hearing transcript.

Table 1: Appointed Ministers

Ministers	Origin of the appointment	Year	Senate vote (Yes, No, Abstention)	Transcription available
Olavo Drummond	President – free appointment	1990	Data unavailable	No
Iram de Almeida Saraiva	Senate	1995	Data unavailable	No
Humberto Guimarães Souto	Chamber of Deputies	1995	51Y - 03N - 03A	No
Bento José Bugarin	President – nominated among TCU auditors	1995	46Y - 01N - 01A	Yes
Valmir Campelo	Senate	1997	63Y - 00N - 01A	Yes
Adylson Motta	Chamber of Deputies	1998	62Y - 01N - 00A	Yes

⁴ In 2006, Senator Luiz Otávio Oliveira Campos (PMDB party, from the state of Pará) was appointed by the Senate and rejected in a vote in the Chamber of Deputies. Following this, the Senate appointed civil servant Raimundo Carreiro, who was confirmed without facing any questioning. It appears that the decision to nominate a civil servant was made to minimize conflicts or political challenges that contributed to Oliveira Campos' rejection.

⁵ According to the Brazilian Supreme Court (STF), even subjective requirements, such as being highly regarded for their legal expertise, can be determined based on objective criteria – Mandado de Segurança (Writ of Mandamus) 25.624-9.

Ministers	Origin of the appointment	Year	Senate vote (Yes, No, Abstention)	Transcription available
Walton Alencar Rodrigues	President – nominated among civil servants from the Public Prosecutor's Office within the TCU	1999	64Y - 03N - 04A	Yes
Guilherme Palmeira	Senate	1999	64Y - 03N - 01A	Yes
Ubiratan Diniz de Aguiar	Chamber of Deputies	2001	62Y - 06N - 01A	No
Benjamin Zymler	President – nominated among TCU auditors	2001	61Y - 05N - 02A	Yes
Augusto Nardes	Chamber of Deputies	2005	61Y - 06N - 02A	No
Aroldo Cedraz	Chamber of Deputies	2006	59Y - 03N - 01A	No
Raimundo Carreiro	Senate	2007	73Y - 00N - 00A	No
José Jorge de Vasconcelos	Senate	2008	41Y - 00N - 00A	Yes
José Múcio Monteiro	President – free appointment	2009	46Y - 11N - 01A	Yes
Ana Arraes Nascimento	Chamber of Deputies	2011	48Y - 17N - 01A	No
Bruno Dantas Nascimento	Senate	2014	47Y - 00N - 00A	Yes
Vital do Rêgo Nascimento	Senate	2014	63Y - 01N - 01A	Yes
Jorge Francisco	President – free appointment	2020	53Y - 07N - 00A	Yes
Antonio Anastasia	Senate	2021	52Y - 00N - 00A	Yes
Jhonatan de Jesus	Chamber of Deputies	2023	72Y - 02N - 01A	Yes

Source: Elaborated by the authors using data from Brasil (2023).

Unlike the President, who always appoints a single candidate who will be submitted to the confirmation hearing, both the Senate and the Chamber of Deputies have, on several occasions, appointed multiple candidates for the same position. The leaders of the legislative houses have the authority to appoint candidates, as stipulated by Legislative Decree 6/1993 (Brasil, 1993).

Of the 11 hearings analyzed in this study, eight involved only one appointee (five nominated by the President and three by the Senate). However, competitive scenarios arose in three cases: In 2008, former Senator José Jorge competed against Senator Leomar Quintanilha. In 2014, Senate employee Bruno Dantas, appointed by members of the Congress who were part of the government's coalition, competed for the position with TCU auditor Sérgio Mendes and Senate budget consultant Fernando Moutinho. In 2021, Senator Antonio Anastasia competed against Senators Katia Abreu and Fernando Bezerra.

Festive confirmation hearings: the laudatory ritual and the “criterion” of political sensitivity

As outlined in the methodology section, the content of the senators' questions were categorized into four categories based on their meaning: TCU's operation, laudatory content, post-appointment expectations, and challenge.

The senators' speeches typically follow a consistent “script”: they often begin with laudatory remarks, followed by questions related to the TCU's operation or specific expectations. It is not uncommon for these speeches to be purely laudatory, while questions challenging the appointee are rare. In our preliminary analysis, we found no significant difference between the questions posed by government-aligned senators and those from the opposition. Whether a senator belonged to the governing coalition did not influence their approach during the TCU minister's hearing. Challenges were identified in only one hearing (involving Jorge Francisco, nominated by Bolsonaro), indicating that in all other hearings, even opposition senators refrained from challenging the appointee. Furthermore, during the hearings of certain politicians, nearly all questions were purely laudatory, with even opposition senators offering praise rather than criticism. Differences in opinions regarding the nominee might be more apparent in the votes, which was not analyzed in this study.

Table 2 below presents the frequency of the 139 content items identified across 122 questions in each confirmation hearing. The descriptive analysis indicates that:

1. Laudatory content and questions regarding the TCU's operation dominate the discourse, comprising 90.7% of the content, while demands/expectations and challenges are notably scarce, accounting for just 9.3%.
2. Although laudatory content is prevalent across all hearings, it appears in significantly different proportions depending on the nominating body: 47% in questions directed at candidates appointed by the President and 70% for those appointed by the Senate.
3. There are notable differences in the nature of the questions based on the appointees' profile:

a. Laudatory content predominates in the questions directed at all appointees who were politicians, regardless of whether the President or the Senate appointed them.

b. Questions concerning the TCU’s operation are more prevalent when directed at civil servant appointees, even for those appointed by the Senate.

This classification of nominees into politicians and civil servants was based on the last position they held prior to their appointment to the TCU. Appointees who were career civil servants at the TCU or in Congress (hired through competitive hiring processes) at the time of their nomination were categorized as “civil servants.” Those who held elected positions – typically as federal deputies or senators, and in some cases as Ministers of State with extensive careers in elected roles or as former senators – were classified as politicians.

One nominee, Jorge Francisco, does not neatly fit into either category. Appointed by President Bolsonaro, he was a retired state police officer who worked as a parliamentary advisor in Congress for the state police and in the offices of members of the Bolsonaro family with mandates. From 2019, he served as Minister of State for the General Secretariat of the Presidency of the Republic. Given that he has never held an elected position or served as a career civil servant at the TCU or Congress, we classified him as an “advisor.”

Table 2: Frequency of contents of questions per confirmation hearing, according to the origin of the appointment

Date	Minister	Origin of the appointment	Professional profile	Contents of questions			
				Laudatory	TCU's operation	Expectations	Challenge
1995	Bento José Bugarin	President – TCU auditor	Civil Servant	4	7	2	0
1999	Walton Alencar Rodrigues	President – Prosecutor of the public prosecutor's office within the TCU	Civil Servant	3	3	0	0
2001	Benjamin Zymler	President – TCU auditor	Civil Servant	3	1	1	0
2009	José Mucio Monteiro	President – free appointment	Politician	15	3	1	0
2020	Jorge Francisco	President – free appointment	Advisor	9	15	1	4
Partial results				34	29	5	4
				47.20%	40.30%	6.90%	5.60%

Date	Minister	Origin of the appointment	Professional profile	Contents of questions			
				Laudatory	TCU's operation	Expectations	Challenge
1997	Valmir Campelo	Senate	Politician	17	0	0	0
1999	Guilherme Palmeira	Senate	Politician	11	1	0	0
2008	José Jorge de Vasconcelos	Senate	Politician	3	3	0	0
2014	Bruno Dantas Nascimento	Senate	Civil Servant	2	10	1	0
2014	Vital do Rêgo	Senate	Politician	13	2	3	0
2021	Antonio Anastasia	Senate	Politician	1	0	0	0
Partial results				47	16	4	0
				70.10%	23.90%	6.00%	0
Total				81	45	9	4
				58.30%	32.40%	6.50%	2.90%

Source: Elaborated by the authors.

Across all hearings, the contents of questions were predominantly laudatory (58.3%) and focused on the TCU's operation (32.4%), accounting for a combined 90.7%. Few questions implying demands/expectations were made, suggesting that senators acknowledge their limited ability to influence the appointee's performance once they take office as a minister.

The main distinction between hearings based on the origin of the appointment lies in the balance between laudatory content and operation-related questions. For candidates appointed by the President, there is a more balanced distribution between laudatory content (47.2%) and operation-related questions (40.3%). In contrast, for candidates appointed by the Senate, the disparity is more pronounced, with laudatory content comprising 70.1% of the questions and operation-related inquiries only 23.9%, nearly three times as much emphasis on praise over performance.

This difference stems not from the origin of the appointment but from the appointee's profile. Laudatory content was predominant in questions directed at politicians (74.1%) compared to career civil servants (14.8%) and advisors (11.1%). Conversely, questions regarding the TCU's operation were

more prevalent for civil servants (46.7%) and less so for politicians (20%), as illustrated in Table 3 below:

Table 3: Indexes of contents of questions per appointee profile

Appointee profile	Laudatory		TCU's operation		Expectation		Challenge	
Civil servant	12	14.8%	21	46.7%	4	44.4%	0	0
Politician	60	74.1%	9	20.0%	4	44.4%	0	0
Advisor	9	11.1%	15	33.3%	1	11.1%	4	100%
Total	81	100%	45	100%	9	100%	4	100%

Source: Elaborated by the authors.

In 1999, during the questioning of former Senator Guilherme Palmeira, Senator Jorge Bornhausen highlighted the difference in the nature of the questions posed to politicians versus non-politicians in his laudatory speech:

“Mr. President, Senators, usually when an appointee for the position of minister at the Federal Court of Auditors is a current or former member of parliament, we refrain from asking questions. Although I won’t be posing any questions today, I would like to make a statement. I first met the appointee in 1968 when he was President of his State’s Legislative Assembly and visited Florianópolis. Since then, I have had the privilege of following his public life and the exceptional opportunity to become one of his friends” (Brasil, 1999, translated by the authors).

As Bornhausen highlighted, and our data supports, the minister’s profile – whether a politician or a civil servant – is more indicative of the treatment they will receive during the hearing than the origin of their appointment, whether by the President or the Senate. Politicians appointed for the position typically experience laudatory or “celebratory” confirmation hearings, characterized by speeches similar to this one by Senator Lindberg Farias during the reading of his report. Note the personal and laudatory tone of the speech, as well as the emphasis on the “requirement” of “political sensitivity”:

“First, allow me to explain why I am serving as the Rapporteur. Due to numerous requests from PMDB [political party] Senators, I found myself in a position where I had no choice but to accept this role. As a native of Paraíba, it is a great honor for me to present this report. Although I am a Senator for Rio de Janeiro, I am originally from Paraíba and am well-acquainted with the history of Vital do Rêgo and his family. Presenting this report and recognizing his journey toward potentially becoming a Minister of the Federal Court of Auditors is a significant honor for me [...] Beyond fulfilling the constitutional requirements, the nominee possesses the technical expertise and political acumen essential for serving as Minister of the highest Court of Auditors in the country.” (Brasil, 2014, translated by the authors).

The senators’ effusive praise serves a clear purpose: it stresses that the nominee is transitioning from political life to bring the ethos of a professional politician to the TCU. While the term “political sensitivity” is not explicitly used, all rapporteurs agree on a similar point: what qualifies a senator for the role of TCU minister is the ability to represent the “thinking” of fellow senators, embodying the same values and perspectives. In other words, the key qualification for a politician to become a TCU minister is not their specific knowledge of the legal, accounting, economic, or public administration areas outlined by the Constitution, but rather their political skills and the trust they have built among their peers through a long career in Congress.

In contrast, TCU civil servants nominated by the President typically experience “cold” hearings, characterized by minimal praise and a lack of the enthusiastic support seen in politicians’ hearings. This distinction is evident in the cases of José Múcio and Jorge Francisco, who were freely appointed by the President.

José Múcio, then a federal deputy and Minister of Institutional Relations, was nominated by President Lula da Silva. His hearing was notably festive, with the presence of numerous dignitaries and family members, creating an atmosphere more akin to a tribute than a formal argument, as positively acknowledged by a senator.

Conversely, Jorge Francisco, appointed by President Jair Bolsonaro, had a markedly different experience. Despite being a Minister of State at the time of his nomination, his hearing was conducted with a similar formality to that of civil servants, marked by fewer compliments and a focus on questions about TCU's operation. Francisco, with a background in technical advisory roles rather than elected or career civil servant positions, faced exceptional scrutiny. This scrutiny likely stemmed from both his association with Bolsonaro's policies, which some senators viewed unfavorably, and his professional background, which differed significantly from the typical profiles of other appointees.

The evidence suggests that the confirmatory hearings primarily validate an appointment that has been previously negotiated, whether through direct discussions between the President and Congress or through party negotiations among senators. This alignment shows that the hearing process often serves as a formality to confirm a prearranged appointment rather than a genuine evaluation of the appointee's qualifications.

1. The majority of questions (58.3%) are laudatory.
2. Senators do not use the questions to verify whether the appointee meets the formal requirements of Article 73 of the Constitution.
3. There is no discernible difference in the content of questions between government and opposition members; most questions are supportive rather than critical.
4. Senators assert that any lack of direct professional experience required by the Constitution is "remedied" by the availability of technical advisors to the TCU ministers.
5. Voting is conducted from the beginning of the session, often before the arguments conclude, suggesting that senators may have already predetermined their votes prior to the hearing.

The next section examines the topics concerning the TCU's operation that senators focus on, as well as their perspectives – whether positive or negative – on the agency's performance. These topics have been identified through the questions posed during the confirmation hearings.

Topics of interest in horizontal accountability and conflicts between the Senate and the Federal Court of Accounts

Of the 139 classified items, 45, or 32.4%, pertain to the TCU's operation (as detailed in the Methodology). These statements address issues that were prominent in public debates at the time, including complaints leading to Parliamentary Inquiry Commissions (CPIs) or newly enacted legislation, and reflect a generally consistent perspective among senators about court, with notable shifts over time.

In confirmation hearings up to 2001, there were 12 items related to the TCU's operation, while post-2008 hearings contained 33 items (the Senate did not conduct hearings between 2002 and 2007). Table 4 below succinctly outlines the topics of operation-related questions, highlighting senators' interests in specific aspects of horizontal accountability. This includes the control exercised by the legislative branch (via the TCU) over public policies and the performance of federal executive agencies, as well as the TCU's performance.

The topics were categorized into four subsets: three consistently present in all hearings (audited entities or programs, the court's institutional efficiency, inspection of public works), and a fourth subset that emerged only after 2008 (relationship between the TCU and Congress). This classification aims to describe the topics senators focus on, which likely reflect their concerns or those of their constituents regarding external control. Thus, in addition to the laudatory praise, the hearings also reveal issues central to the agency's core activities and its relationship with Congress, particularly the TCU's responsiveness to legislative representatives.

Table 4 below displays the subtopics of interest to senators within each of these four subsets:

Table 4: Subtopics covered in questions about the TCU's operations

Relationship between the TCU and Congress
Creation of a board to oversee the courts of accounts
Autonomy of the TCU in relation to the legislature
Competitive hiring process to select TCU ministers
Lifetime tenure of TCU ministers
Political Independence
Excessive autonomy of the TCU in relation to Congress

Political impartiality of TCU ministers
Proximity to the President
Audited entities or programs
State-owned banks and public funds
Closed pension plans
Privatization
Subsidies
Public expenditure
Corruption
Spending efficiency
Bank secrecy
Credit concession
The court's institutional efficiency
Audit of public accounts
Dscentralization of the court expanding its reach
Internal controlo f the executive
Agility of the TCU
Expansion of controls
Money laundering law
Prevention
Inspection in municipalities
Inspection of public works
Unfinished construction works
Parliamentary Inquiry Commissions (CPI)
Public Procurements
Misappropriation of public funds

Source: Elaborated by the authors

Another significant aspect of the senators' questions is the shift in their tone and content over time. Up until the 2001 hearings, senators primarily offered praise for the TCU. However, since 2008, there has been a notable shift: hearings have increasingly featured criticisms of the court, with praises becoming rare.

When senators do offer praise, they often highlight positive collaborations with TCU staff on legislative efforts, such as drafting laws and conducting CPIs. They also commend the expansion of controls over public administration,

noting the introduction of annual work inspections in 1997 and the TCU's expanded role following the Fiscal Responsibility Law in 2001.

There are two types of criticism:

1. Regarding public administration:

a. Senators have expressed concerns that the TCU is excessively strict with mayors and public managers from smaller municipalities, often holding them accountable for minor infractions that may not be entirely their fault. This criticism highlights issues with the TCU's stringent formalism and the insufficient bureaucratic infrastructure in smaller municipalities. As a result, these local managers and mayors are sometimes perceived as being unfairly treated in TCU audits;

b. The oversight by the TCU, which often leads to the suspension or delay of federal public works, causes significant financial losses for states and municipalities, as well as for the affected populations.

2. Regarding the TCU's excessive autonomy in relation to Congress: The TCU is perceived as overly powerful, engaging in "oversight activism" that impedes the executive's ability to operate effectively. Additionally, it is seen as insufficiently responsive, as it creates its own case law to extend its authority beyond the bounds of existing legislation.

One of the most pointed criticisms of the TCU occurred during the 2021 hearing for Antonio Anastasia, Katia Abreu, and Fernando Bezerra. Senator Rogério Carvalho (PT/SE) initially offered brief praise for the three nominees but then delivered a severe critique of the TCU, marking an unprecedented level of criticism that had not been seen before or since.

"the Legislative Houses appoint two [sic] members to the Court of Auditors, and we are unable to count on the agency as an advisor helping the legislative branch. It does not fulfill this role; instead, it operates as a powerful entity, almost a parallel power, which sometimes unduly interferes in the work of the executive and other administrations – primarily the executive – disrupting projects and establishing rules that often seem more authoritative than the legislation. This is absurd. I have never witnessed a sub-legal norm holding more weight than a law; yet, frequently, the sub-legal norms of the Federal Court of Auditors override the legislation

enacted by this and the other House of the National Congress, which are validated through voting. [...] The will of the legislator should prevail, **but we have created mechanisms that undermine Brazilian democracy**” (Brasil, 2021, translated by the authors, our emphasis).⁶

This speech was particularly severe, even suggesting that the TCU posed a threat to democracy itself. While other senators’ criticisms did not extend to such an extreme, they similarly addressed concerns about the TCU’s excessive autonomy and inadequate responsiveness.

Additionally, a notable shift has occurred in the topics of scrutiny since 2008. Questions now more frequently address issues such as corruption and oversight of municipalities, topics that were not prevalent until after 2001. Prior to 2001, the questions mainly focused on federal government entities, programs, and actions (e.g., state-owned banks, subsidies, public spending, credit concession) – areas more related to the federal level than to subnational entities. These were followed by concerns about the efficiency of the TCU’s operation, such as its decentralization and territorial expansion and relationship with internal control bodies. Inspection of public works was the least frequent topic.

From 2008 onwards, a new focus emerged: the relationship between the TCU and Congress. This includes increased criticism of the TCU’s operation, particularly in relation to the inspection of public works. These criticisms address issues such as the TCU’s management of municipal oversight and the impact of its actions on public works projects. Thus, the confirmation hearings now not only include laudatory praise but also highlight significant concerns about the agency’s core activities and its responsiveness to Congress, reflecting a deeper scrutiny of the TCU’s role and effectiveness.

Conclusions

Through a content analysis of senators’ statements during confirmation hearings, this research sheds light on how the debate on horizontal accountability is articulated within the Senate’s Economic Affairs Committee (CAE) and offers

⁶ The senator likely intended to say “two-thirds of the members,” or there was a transcription error, as the Legislative Houses appoint 6 of the 9 ministers.

hypotheses about the conditions influencing the appointment of TCU ministers. However, it is crucial to note that this analysis does not encompass the entire appointment process, such as the President's selection, the Senate vote, or the political negotiations that supports nominee approval.

The hearings expose preferences and conflicts that are not evident in votes. The content analysis revealed the senators' favorite profile – experienced politicians with “political sensitivity,” characterized by negotiation and leadership skills. It also highlighted the topics of interest to senators, including audited entities or programs, the TCU's institutional efficiency, the inspection of public works, and the relationship between the TCU and Congress. Furthermore, it uncovered tensions between senators and the TCU, particularly regarding the agency's perceived excessive autonomy and limited responsiveness to Congress. The hearings thus emerge as a significant locus for exercising power in the context of horizontal accountability, where the Senate actively debates and asserts its views on the matter, much like it does for positions at the Central Bank of Brazil and in foreign relations.

The confirmation hearings, rather than serving as a formal check on constitutional qualifications for the role, work as platform for senators to articulate their positions on external control and the TCU's operations before their constituents and party members. They use this space to express their preferences regarding the profile and performance of TCU ministers, effectively rewarding politicians who have demonstrated key values in congressional activity – such as dialogue, negotiation, and peer recognition – with these prestigious appointments.

Through the hearings, senators exert personal influence and indirectly shape the President's decisions, using the process less as a means to evaluate appointees and more as a way to affirm their preferences concerning the TCU's leadership and operations. The analysis of these hearings also indicates a shift in senators' positions, likely driven by the political and administrative impacts of the TCU's expanded role as documented in the literature. Senators increasingly reflect criticisms, possibly originating from local officials affected by TCU audits, concerning the TCU's perceived overreach and autonomy from Congress.

The Senate, therefore, is not merely a passive entity rubber-stamping the President's choices; it actively asserts its stance on the TCU's role in external

control, as evidenced in the confirmation hearings. This dynamic suggests that Congress may be strengthening its oversight capacity relative to the executive, much like it has done in the realm of federal budget control. The reduction in the President's power to appoint TCU ministers, as instituted by the 1988 Constitution, can be seen as the first step in reinforcing Congress's control over the TCe at the expense of the Executive.

It is important to point out that the relationship between the Senate and the TCU in the exercise of external control powers is perhaps another area in which Congress is strengthening its position vis-à-vis the executive, similar to its control over the federal budget. The reduction in the President's power to appoint ministers in the 1988 Constitution would have been the first step in this strengthening of parliament, in the sense of reinforcing Congress's control over the TCU to the detriment of the executive.

Although senators publicly voice criticisms of the TCU's alleged overreach, the literature suggests a different narrative. The TCU's actions are not the root cause of federal project management issues (Olivieri, 2018), but rather, the TCU's role has expanded significantly in recent years (Grin, 2020). This expansion has occurred with the consent of Congress, which has provided the necessary legislative and budgetary support.

Despite the harsh public criticisms during hearings, these do not seem to translate into concrete actions that would curb the TCU's audit and inspection activities. The autonomy of the TCU's bureaucracy appears to have grown over the last three decades, along with its powers. A key question remains: Is appointing seasoned politicians to the TCU's leadership enough to maintain the desired level of congressional control over the agency? This study did not seek to answer this question, but it points to significant areas for future research. Another promising research avenue would be to replicate this analysis for the appointment processes of state and municipal audit courts, to better understand how the dynamics between the executive and legislative branches manifest across different levels of government through the appointment of auditors.

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As sabatinas dos indicados ao TCU no pós-1988: poder de nomeação e *accountability* horizontal

Resumo: O artigo analisou as sabatinas dos indicados a ministro do TCU entre 1988 e 2023 para entender o que elas revelam sobre o processo de nomeação e a *accountability* horizontal. O método é a análise de conteúdo, e o material utilizado foram as transcrições das sessões de arguição no Senado. A análise das sabatinas revela preferências e conflitos que a votação em plenário não permite acessar. Entre essas preferências está o perfil de ministro valorizado pelos Senadores (políticos experientes com “sensibilidade política”). Identificamos também os temas que interessam aos senadores no debate sobre a *accountability* horizontal e revelamos os conflitos entre senadores e TCU (a respeito da autonomia e responsividade do TCU perante o Congresso). Ou seja, as sabatinas dos ministros do TCU também são *locus* de poder relevante, como nos casos do Banco Central e das relações exteriores.

Palavras-chave: sabatina, Senado, tribunal de contas, nomeação.

The confirmation hearings of appointees to the Brazilian Federal Court of Accounts post-1988: Appointment power and horizontal accountability

Abstract: The article analyzed the confirmation hearings of Court of Accounts (TCU) ministerial nominees between 1988 and 2023 to understand what they reveal about the appointment process and horizontal accountability. Using content analysis of Senate hearing transcripts the study reveals preferences and conflicts that are not apparent in the senators’ votes. Among these preferences is the minister profile valued by Senators (experienced politicians with “political sensitivity”). The research also identifies the topics that interest senators in the debate on horizontal accountability and reveal the conflicts between senators and TCU (regarding the autonomy and responsiveness of the TCU before Congress). In other words, the confirmation hearings for TCU ministers are a significant locus of power, comparable to those for positions at the Central Bank of Brazil and in foreign relations.

Keywords: confirmation hearings, Senate, court of audit, appointed positions.

CRedit:**Authors' contributions:**

- a. Participation in the conceptual discussion: OLIVIERI, Cecília.
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- c. Participation in the discussion of results: OLIVIERI, Cecília.
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