

Revista de
**Direito Econômico e
Socioambiental**

ISSN 2179-8214

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REVISTA DE DIREITO ECONÔMICO E SOCIOAMBIENTAL

vol. 12 | n. 2 | maio/agosto 2021 | ISSN 2179-8214

Periodicidade quadrimestral | www.pucpr.br/direitoeconomico

Curitiba | Programa de Pós-Graduação em Direito da PUCPR



Monitoring and evaluation of public policies in Brazil: conceptual approach and trajectory of legal and institutional development

*Monitoramento e avaliação de políticas públicas no Brasil:
abordagem conceitual e trajetória de desenvolvimento jurídico
e institucional*

Robert Bonifácio*

Universidade Federal de Goiás (Brazil)

rbonisilva@gmail.com

Fabrizio Macedo Motta**

Universidade Federal de Goiás (Brazil)

fabriciomotta@gmail.com

Recebido: 27/09/2021

Received: 09/27/2021

Aprovado: 24/11/2021

Approved: 11/24/2021

Como citar este artigo/How to cite this article: BONIFÁCIO, Robert; MOTTA, Fabrizio Macedo. Monitoring and evaluation of public policies in Brazil: conceptual approach and trajectory of legal and institutional development. **Revista de Direito Econômico e Socioambiental**, Curitiba, v. 12, n. 2, p. 340-371, maio/ago. 2021. doi: 10.7213/rev.dir.econ.soc.v12i3.28653

* Professor da Universidade Federal de Goiás (Goiânia-GO, Brasil). Doutor em ciência política pela Universidade Federal de Minas Gerais (Belo Horizonte-MG, Brasil). Membro permanente dos programas de pós-graduação em Ciência Política e em Direito e Políticas Públicas. E-mail: rbonisilva@gmail.com

** Professor Permanente do Programa de Pós-Graduação em Direito e Políticas Públicas (Goiânia-GO, Brasil). Doutor em Direito do Estado pela Universidade de São Paulo (São Paulo-SP, Brasil). Mestre em Direito Administrativo pela Universidade Federal de Minas Gerais (Belo Horizonte-MG, Brasil). Conselheiro do Tribunal de Contas dos Municípios do Estado de Goiás. E-mail: fabriciomotta@gmail.com

Resumo

O artigo investiga a área de monitoramento e avaliação de políticas públicas a partir de abordagem conceitual e de interpretação sobre seu desenvolvimento institucional no Brasil. Para tanto, são construídas análises críticas a partir das perspectivas jurídica e sociopolítica. Especificamente, são definidas e discutidas as funções políticas do monitoramento e da avaliação; discorre-se sobre a emergência e constituição de sistemas de avaliação na América Latina e no Brasil e são feitas reflexões sobre a importância da avaliação no ordenamento jurídico brasileiro, bem como sobre os recentes avanços no Poder Legislativo. Como principais conclusões, é apontado que o uso político dos trabalhos de avaliação de políticas públicas assume função de realocação e que tem sido possível perceber avanços institucionais na área, mas que ainda há limitações em relação ao escopo dos trabalhos avaliativos.

Palavras-chave: monitoramento e avaliação; políticas públicas; sistemas de avaliação de políticas públicas; funções políticas; desenvolvimento institucional.

Abstract

This paper investigates the area of monitoring and evaluation of public policies from a conceptual approach and an interpretation of its institutional development in Brazil. Therefore, we build critical analyzes from the legal and sociopolitical perspectives. Specifically, we define and discuss the political functions of monitoring and evaluation, discuss the emergence and constitution of evaluation systems in Latin America and Brazil, and reflect on the importance of evaluation in the Brazilian legal system, as well as on recent advances in Legislative Power. As main conclusions, we understand that the political use of public policy evaluation works assumes a reallocation function, that there have been institutional advances in the area, but that there are still limitations in relation to the scope of evaluative works.

Keywords: *monitoring and evaluation; public policy; public policy evaluation system; political functions; institutional arrangements.*

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1. Introduction

This study analyzes aspects related to the area of monitoring and evaluation of public policies (M&E), from a conceptual approach; analysis of the historical trajectory of its political functions and institutional development in Latin America; and the debate about its importance and its increasing value in legislation and in the legal system. The article provides a mapping of the M&E area and reflects on it critically from sociopolitical and legal perspectives.

It is usually considered that, from the 1990s onwards, the last phase of what is conventionally called the “public policy cycle”, the evaluation of public policies, began to incite greater interest from academics and government actors in Brazil. This movement stemmed from the success of neoliberal ideals, which influenced the transformation of public management into more managerial and directed the actions of transnational organizations to finance social intervention projects that prioritized both the target audience and the evaluation of their results.

The rise in the status of public policy evaluation in the governmental environment has meant that issues pertaining to this field have been considered when defining government investments. As a result, there has been a considerable increase in scientific productions that relate to this theme, especially those referring to the techniques involved in evaluative studies, as well as the institutional design of public policies that encompass the monitoring and evaluation (M&E) stages.

The article is organized as follows: in the first section, the political functions of M&E are defined and discussed and, subsequently, in the second section, the emergence and constitution of systems in Latin America and Brazil is addressed. The third section, in turn, deals with the centrality of M&E in the legal system and in legislative production. Finally, in the final remarks, the contributions of the work to the improvement of monitoring and evaluation activities are summarized.

2. M&E: conceptualization and instrument of power

In this section, the terms monitoring and evaluation of public policies are defined and their main characteristics are highlighted, and critical approaches are presented. Furthermore, some of the main contributions of

the specialized literature on the conception of public policy evaluation as an instrument of power on the part of government officials are analyzed.

2.1. Definition and characteristics

Cotta's (1998) conception of the nature of evaluative work is shared by many jurists. According to the author, evaluation preliminarily requires a value judgment about what is considered good or bad, success or failure, progress or setback, etc. In other words, there is no evaluation without value judgment. Furthermore, evaluation needs to be based on clear and rational criteria, which means that measurement is an essential aspect. Therefore, evaluation of public policies involves both value judgments and techniques.

Jannuzzi (2016) and Echeverría (2009) emphasize, in turn, that the evaluation of public policies is not a purely scientific process. Although evaluative work requires compliance with the logical steps of science and the publication of the results achieved, which make them similar to a scientific work, social utility and plurality in their construction must necessarily be incorporated into them. The authors clarify that in evaluative works it is necessary (1) to include a reflection or presentation of results that indicate the impact arising from a particular public policy among the target audience; (2) to incorporate experiences and knowledge about public policies of social actors not belonging to the field of science; and (3) publicize results in such a way that the general public has little difficulty in understanding them. "The field of knowledge related to Public Policies is, therefore, more linked to the plural and eclectic context of Technoscience than the Cartesianism of Modern Science" (JANNUZZI, 2016, p. 126).

In what is conventionally conceived as a "public policy cycle", evaluation is located in the last phase, as a step that synthesizes the results and reviews the entire process that took place, thus helping in possible future improvements, according to Pinto (2014). However, it should be noted that the cycle of public policies is a pedagogical device to easily understand the different stages of public policies, which means that (1) the succession of stages does not necessarily occur in a linear and consecutive way; and that (2) there is often no clear separation and independence between the steps.

Such considerations are clearer when monitoring is used in a particular public policy. Monitoring is a kind of daily monitoring of the execution of a

public policy, serving as an instrument for organizing data and correcting short-range routes throughout the various phases of a public policy, such as formulation, decision-making and, mainly implementation. In other words, in practice, monitoring is the microcosm of the evaluation of public policies, they are coordinated actions that will later feed structural research on the limitations and virtues of a given public policy. Therefore, the idea that evaluation only occurs at the end of a public policy or, at least, after the completion of a cycle of governmental action (either a set of actions and/or the closing of a minimum period of time for the execution of a public policy) is wrong.

Although there are several classifications available, the specialized literature conceives of carrying out the evaluation of public policies based on phases and analyses. The phases would be three: (1) the *ex ante*, which takes place before the implementation of the public policy; (2) the executive, which performs a synthesis of information on a public policy already in force; and (3) the *ex post*, which is developed after some stages of public policy have been completed.

The analyzes are conceived as of four types, which are developed over the three phases described above: (1) products and materials, (2) processes, (3) efficiency (or economic) and (4) effectiveness (or impact).

The analysis of products and materials consists of accounting for materials and human resources incorporated in the implementation of a particular public policy. Process analysis, on the other hand, includes verifying the correctness of administrative and legal acts and optimizing logistics. The cost-benefit analysis of a public policy, that is, the concern with how much is spent and how much is achieved, is usually called efficiency analysis. Finally, the analysis of effectiveness consists of measuring the impact of a public policy, that is, how much this intervention contributed to the transformation of the social reality of the beneficiaries. Thus, it is looking for causal relationships.

2.2. M&E: history and political functions

The first minimally coordinated actions to carry out public policy evaluation date back to the 1960s, in the United States of America, according to Faria & Filgueiras (2003) and Faria (2015). According to these authors, evaluation was understood at the time almost exclusively as a planning tool to be used by policymakers and highest-level managers. Thus, in the first two

decades of the field's expansion — the 1960s and 1970s — the technical nature of its use predominated, so that governmental actions could be better understood and their potential for intervention in reality could be measured and, from there, legitimize the technical character in the planning processes and the execution of public policies. This is called the “information function” of public policy evaluation.

The main clash in the 1960s and 1970s was over the type of arrangement that should predominate in the management of public policies: the top-down model, in which high-level bureaucracy meticulously elaborates public policies and assigns “street-level bureaucrats” only the function of carrying out previously planned actions, or the bottom-up model, in which high-level bureaucracy shares the task of planning public policies with “street-level bureaucrats” and also with civil society and beneficiaries, expanding the participation of social actors in the construction of public policies.

From the 1980s onwards, the political use of public policy evaluation changed, which was used as an argument to carry out reforms in public sector management in Brazil. This is the reallocation function of public policy evaluation, which was used to support the New Public Management movement. In this process, evaluators have become auditors who focus on the measurement of results. The main actors are no longer program administrators — as when the information function prevailed — but audit offices and the Finance or Economy Ministries. According to Derlien (2001), the issues that came to be stressed placed more emphasis on quantity than on quality, with the following questions being examples of the ideas that guided the work: which programs can be suppressed or reduced based on the negative results of the evaluations? What are the consequences of the backlash of government action, that is, of privatization or the concession of certain public services? How to obtain greater cost-benefit from the reorganization of programs?

According to Faria (2015), the evaluation of public policies gained centrality in debates and actions related to the public sector, because it guaranteed the credibility of the reform process and the political sustainability of the deregulation and government size reduction guidelines, either through the so-called “devolution” — that is, the displacement of functions and services to subnational bodies — or through privatization. It

was also hoped that this movement would encourage transparency in public management and the measurement of beneficiary satisfaction.

In the Latin American context, the author clarifies that the materialization of the “evaluation function” took place late, only in the 1990s. The relocation function predominated in order to sustain the State reform processes. In this context, the design of these reforms favored two basic purposes: (1) the adoption of perspectives of limitations of public expenses, efficiency, productivity and transparency and (2) the reassessment of the pertinence of the range of attributions linked to the public administration.

The authors of this article consider that the reallocation function of public policy evaluation persists in recent years and on a global scale. However, politically, it no longer aims to support State management reform processes, which have already been carried out in many countries, but rather government decisions on fiscal austerity. In a context where predominates politically the idea that the State needs to reduce spending on social benefits and investments, it becomes imperative to carry out an evaluation of public policies, in order to have greater accuracy as to the number of beneficiaries and the number of resources to be spent, having the optimal cost-benefit point in mind. Governments need to minimally solve social problems for the coalition in power to sustain themselves, but with even more limited resources, due to the predominance of the fiscal austerity political agenda. Therefore, it is about operationalizing the idea of “doing more with less”.

3. M&E in Latin America and Brazil

In this section, the historical trajectory of institutional development of M&E systems in Latin America and Brazil (in this case, focusing on the federal government) is emphasized, highlighting the contexts of emergence, the main current systems, and some reference works in Brazil.

3.1. M&E path in Latin America and Brazil

M&E systems in Latin America began in the 2000s and, despite the relatively late start (compared to the US), Yarahuán and Trujillo (2015) understand that the continent’s national governments have experienced a dynamism in the creation of responsible institutions for monitoring and evaluating public policies.

The authors highlight two reasons for the conformation of this scenario: on the one hand, the fiscal and economic crises of the 1970s and 1980s, whose government responses were in the sense of fiscal austerity, resulting in important advances in the creation of institutions and rules to control the public deficit, new laws of responsibility and measures to improve transparency. On the other hand, the waves of democratization opened channels for demands and social pressures focused on the search for effectiveness of government action, causing governments to change the formulation and dissemination of new paradigms of government management, with parameters similar to those of international organizations, with schemes and rules of government action more clearly oriented by results and for the generation of public value.

According to Yarahuán and Trujillo (2015), there are some milestones in this movement to strengthen M&E systems in Latin America and one of them is the creation of the *Centro de Aprendizaje en Evaluación y Resultados (CLEAR)*, which was created by an independent evaluation group of the World Bank in 2010, and currently has 6 regional centers around the world. More recently, at least one more institution has been prominent in promoting M&E in Latin America, The Abdul Latif Jameel Poverty Action Lab (J-PAL), whose Latin America and Caribbean office is located at the Pontifical Catholic University of Chile¹.

Regarding the trajectory of M&E in Brazil, Melo (1998; 1999) highlights that there was a boom in the 1980s, driven by the democratic transition. There are three reasons for expansion: first, the shift in the public agenda. In the 1970s, the debate about the Brazilian development model predominated. This was followed by a research agenda focused on municipal policies and decentralization. Second, despite the end of the authoritarian period, obstacles to the achievement of effective social policies continued to exist, which served to strengthen studies on the effectiveness of public action. Thirdly, the international diffusion of the idea of reform of the State and the State apparatus became the organizing principle of the public agenda of the 1980s-90s, which generally triggered a proliferation of studies on public policies.

¹ For more information, access: <https://www.povertyactionlab.org/latin-america-caribbean>. Access on: Sept 21, 2021.

Presenting a reading convergent with Melo's, Guerrero (2015) highlights that there has been a substantial change in the management of public policies in Brazil since the Fernando Henrique Cardoso administration (1995-2002). He attributes a prominent role to the Ministry of Planning (MPOG), especially since the Pluriannual Plan (PPA) was regulated in 1998, when the ministry introduced an approach to results in sectoral public policies. Since then, the author points out, funding of baselines, the inclusion of implementation and results indicators and the allocation of managers responsible for the program began. As a result, the effective beginning of a culture of management for results was favored, consequently creating a favorable environment for monitoring and evaluation of public policies. These advances were consolidated with the following events: (1) continuation of the successive PPA; (2) the introduction of the Management Information and Planning System (SIGPlan); and (3) publication of methodological guides for program indicators and an ongoing training effort.

During the Lula government (2003-2010), there was a significant redefinition of policies and leadership board. With the objective of improving the focus on presidential priorities, the System for Monitoring Presidential Goals (SMMP) was introduced in 2004, constituting a complementary instrument to monitoring the PPA, highlights Falcão-Martins (2007). However, it was the Secretariat for Assessment and Information Management (SAGI) that stood out. According to Ferrarezi, Jannuzzi & Montagner (2016), it originated in the first institutional organization of the MDS, which was created in 2004, and constituted as an innovation because it was the first body created specifically to carry out monitoring and evaluation activities of public policies. The Ministries of Health (MS), Education (MEC) and the Civil House had previously carried out monitoring and evaluation of public policies but did not have a specific body to carry out tasks of this nature.

At the time of the Ministry of Social Development (MDS)², SAGI had the Monitoring and Evaluation Working Group (GTMA), which was responsible for preparing annual monitoring and evaluation plans and building a joint research and monitoring agenda for MDS programs and policies. In 2008, through Ministerial Ordinance No. 160, a Monitoring and Evaluation Working Group (GTMA) was created. This group is responsible for

² SAGI still exists and is currently under the structure of the Ministry of Citizenship. For more information, access: <https://www.gov.br/cidadania/pt-br/servicos/sagi>. Access on: Aug 21, 2021.

preparing annual monitoring and evaluation plans. In other words, it is the one who sets the guidelines for the work to be developed. After a period of less activity, as the authors point out, the GTMA began to aim at building a joint research and monitoring agenda for MDS programs and policies. As of Ordinance No. 2527, of October 10, 2018, SAGI's powers are reinforced, as the Monitoring Panel is established, which is a set of social indicators related to the ministry's programs and actions that make up an online platform of visualization, which offers graphs, tables, or other more suitable ways of accessing and reading the data by the public³.

At the end of the second term of former President Dilma Rousseff, in 2016, two committees were created that contributed to the beginning of a significant organizational advance in the federal government's M&E work, the Committee for Monitoring and Evaluation of Federal Public Policies (CMAP) and the Union Subsidies Monitoring and Evaluation Committee (CMAS). Created in the structure of the then MPOG, both had a collegiate organization that managed evaluative work. With the advent of the Bolsonaro government, the committees became part of the structure of the Ministry of Economy (ME) and, as of June 2019, through Decree No. 9,834, they underwent substantial changes. The term CMAP came to mean Public Policy Monitoring and Evaluation Council and became the superior body of two committees: the Monitoring and Evaluation of Direct Expenditures (CMAG) and the Monitoring and Evaluation of Union Subsidies (CMAS)⁴.

The CMAP is a consultative body with the purpose of evaluating a list of previously selected public policies, via PPA, that are financed by direct expenditures or subsidies from the Union and, after the evaluation is completed, monitor the possible implementation of recommendations for changes in the public policy. Its composition is given by the executive secretaries of the Ministry of Economy (ME); the Civil House of the Presidency of the Republic (CC-PR); and the Controller General of the Union (CGU). CMAG and CMAS, on the other hand, have the same collegiate composition, having representatives from the same ministries and controllership, but in different positions, all of them secretariats and sub-chiefs.

³ For more information, access: <https://aplicacoes.mds.gov.br/sagi/vis/dash/>. Access on: Aug 21, 2021.

⁴ For more information, access: <https://www.gov.br/economia/pt-br/aceso-a-informacao/participacao-social/conselhos-e-orgaos-colegiados/cmap>. Access on: Aug 21, 2021.

3.2. Reference works in M&E in Brazil

Over the last ten years, works have been published that are intended to serve as a reference for M&E works, originating from the federal public administration or from private institutions. Table 1, below, provides summarized information about them.

Regarding the works promoted by the Federal Public Administration, some of them have a technical character, in order to constitute standards to guide the work of public policy evaluation (CASA CIVIL DA PRESIDÊNCIA DA REPÚBLICA, 2018a, 2018b; TCU, 2020, 2021). We will highlight some characteristics of these works throughout this topic.

From a specifically legal point of view, booklets and guides can be considered, at first glance, as non-imposing legal instruments (*soft law*). If they are not recognized by the legal system (through the restriction to formal and material competence for editing), they will not have mandatory effects, being more useful in the interpretation of norms, in the standardization of procedures and in the indication of standards of conduct. In this situation, for example, Codes of Ethics and Codes of Conduct can also be included, whose recognition by the legal system must be verified in each case.

In direct federal administration, the products of these efforts are the practical guides for *ex ante* and *ex post* analysis, which mean, respectively, prior analysis of actions to be carried out in public policies (new or being reformulated) and analysis of results and/or impacts of existing public policies. Launched in 2018, they are guides created to serve as a technical reference for the complete chain of activities related to the evaluation of public policies at the federal level. The Civil House of the Presidency of the Republic, from the Sub-chief for the Analysis and Monitoring of Governmental Policies, was in charge of the executive management, with IPEA being responsible for the leadership of the substantive content of both works.

Table 1 – Reference works in M&E in Brazil

Authors	Institution	Year	Title
Naércio Menezes Filho (organizer)	Itaú Social	2012	Economic evaluation of social projects

Rogério Boueri, Fabiana Rocha and Fabiana Rodopoulos (organizers)	National Treasury Secretariat (MF)	2015	Assessment of the Quality of Public Expenditure and Measurement of Efficiency
CC-PR, MPOG, MF and CGU	CC-PR, MPOG, MF and CGU	2018	Public policy evaluation: practical guide to <i>ex post</i> analysis
CC-PR and IPEA	CC-PR and IPEA	2018	Public policy evaluation: practical guide to <i>ex ante</i> analysis
Nilo Luiz Saccaro Junior, Wilsimara Maciel Rocha and Lucas Ferreira Mation (organizers)	IPEA	2018	CMAP 2016 to 2018: studies and proposals by the Committee for Monitoring and Evaluation of Federal Public Policies
ESAF	ESAF	2018	Academic contributions to the Union's subsidy policy
Adolfo Sachsida (organizer)	IPEA	2018	Public policies: evaluating more than half a trillion reais in public spending
Silva, Rogério Renato; Joppert, Márcia Paterno; Gasparini, Max Felipe Vianna (organizers)	RBMA	2020	Guidelines for the practice of assessment in Brazil
TCU	TCU	2020	Public policy control benchmark
TCU	TCU	2021	Public policies in ten steps

Source: the authors

Ex ante analysis is closely related to the notion of planning, since it aims to identify problems and actors, design processes and predict results and problems. In other words, it is about diagnosing a specific issue and guiding future work, so that the best results are obtained at the lowest possible costs. The moment to carry out the *ex ante* analysis occurs in the

creation, expansion or improvement of public policies. In operational terms, such an analysis encompasses the following tasks: problem diagnosis, characterization of public policy, design of actions to be implemented, strategy for building legitimacy, implementation, monitoring, evaluation, control, budgetary and financial impact and cost-benefit analysis. In short, the *ex ante* analysis serves to rationalize the prediction of actions of different natures to be implemented in public policies.

The book “Public policies evaluation: practical guide to *ex ante* analysis” initially provides basic information about what this type of analysis is and what it is for. In sequence, it addresses in depth each of the operational items of this type of analysis, mentioned in the previous paragraph. There is no standard of topics developed in each chapter, since the tasks to be performed in an *ex ante* analysis have distinctive characteristics. Therefore, they demand different approaches. Among the topics developed, there are descriptions of normative instruments, suggestion of models of procedures to be adopted, exposition of real examples, criteria for the construction of indicators, information on databases, presentation of logical-deductive models, identification of relevant political actors, management, and task execution models, among other things.

In “Public policies evaluation: practical guide to *ex post* analysis”, it seeks to build guidelines for the evaluation of public policies in vogue, from different analytical perspectives and based on various objectives. In the presentation and in the preface, the then Minister of the Civil House and President of IPEA makes it clear that the *ex ante* and *ex post* analysis guidelines are works that complement each other and that the horizon to be sought is the continuous realization of public policy evaluations, to optimize the use of public resources.

The initial chapter explains the minimum bases of definition on M&E, informs about federal government agencies that carry out evaluation, highlights existing data and data repositories, describes the committees linked to the evaluation work — the CMAP and the CMAS — and identify the evaluation lines. It is from the last point that the book subsequently develops, deepening the analysis on each of the lines, namely: problem diagnosis analysis, design evaluation, implementation evaluation, governance evaluation, results evaluation, impact evaluation, economic evaluation, and efficiency analysis.

Also in the opening chapter, attention is drawn to what is classified as an innovative approach to the book: the design of executive review. This phase serves as a gateway to other evaluations, which identify in a timely manner in which element or in which process of the public policy development chain there are greater chances of improvements. In practical terms, this evaluation generates a document that diagnoses all stages and all processes of a given public policy, objectively reporting the results achieved so far and the problems to be solved.

Although this stage of the evaluative work is of paramount importance, as it provides the responsible actors with information on the current state of affairs, on the other hand, it cannot be called innovation. The *ex post* analysis guide does not innovate when dealing with this type of evaluation, it only incorporates one more contribution in this regard. In order not to go beyond the national case, the Government of the State of Minas Gerais is an example, which between 2007 and 2010 carried out executive evaluations of four structuring projects — *Gestão Integrada de Ações e Informações de Defesa Social, Processo, Viva Vida* and *Poupança Jovem* — developed within the scope of the State Results Program⁵. The conduction of the works, in turn, was inspired by similar works carried out in the United States, Mexico, Colombia and Chile. The results were exposed in 2011, at the III Seminar of the Brazilian Network of Monitoring and Evaluation and, in the same year, a book about these experiences was published⁶.

The technical works produced by the Federal Court of Auditors, in turn, are the result of a policy of disseminating knowledge related to governance, including public policies. The most recent TCU publication on the subject, entitled “Public Policy in Ten Steps”, is a synthetic primer that aims to be a practical guide for society and public managers to understand the elements of public policies. Regarding M&E, step 10 (ten) provides: “Ensure that the results and impacts of public policy are satisfactory” (TCU, 2021). The most relevant contribution, however, resides in the “Referential for Control of Public Policies”, a study prepared with an extensive literature review and dialogue with technical standards, edited with the objective of

⁵ For more information, access: <http://www.agenciaminas.noticiasantigas.mg.gov.br/noticias/governo-de-minas-publica-experiencia-na-avaliacao-executiva-de-projetos-estruturadores/>. Access on: Aug, 27, 2020.

⁶ MINAS GERAIS (2011). *Manual da avaliação executiva dos projetos estruturadores do governo do estado de Minas Gerais*. Belo Horizonte, MG: Escritório de Prioridades Estratégicas.

“[...] establishing a structure of common criteria that can compose a model to assess the level of maturity of public policies, guiding and systematizing control actions, in order to contribute to the improvement of the performance and results of public policies, through the improvement of their formulation, implementation and evaluation process” (TCU, 2020, p. 18).

The Benchmark brings several audit questions aimed at assessing the maturity of public policy regarding M&E, contributing to the advance planning of these stages by the bodies and entities responsible for conducting specific policies. The edition of booklets and manuals like this one characterizes an important inducing role on the part of the TCU, previously identifying its understandings and contributing to the construction of consistent monitoring and evaluations.

4. M&E's growing role in the legal system and in legislative production

This section addresses the points of contact between Law and M&E, discussing competences and institutional arrangements. Legislative proposals are also discussed, as well as an article in the law, at the federal level, aimed at promoting M&E in Brazil.

4.1. Competences and institutional arrangements linked to M&E: legal-positive approach

The analysis focused on the development of the M&E area can have a fertile dialogue with the approach of law and public policies, allowing the interaction of the different social and political sciences with the Law to contribute to a better understanding of complex public problems (BUCCI, 2019). Recognizing the essentially applied nature⁷ of this approach makes it

⁷ “The DPP approach has an applied vocation, aimed at translating instrumentalism into legally well-formulated and properly grounded propositions, apt to analyzing concrete problems and contributing to solutions. Its purpose is to collaborate with the institutional construction of the Brazilian State, from a democratic perspective and the realization of fundamental rights. Given the variety of possible connections between law and public policies and their “labyrinthine” character, a possible methodological strategy is to map them, identifying issues that are more suitable for the DPP approach” (BUCCI, 2019).

apt – and especially useful – to face the various political and legal aspects necessarily involved in concrete and complex problems.

An interesting representation scheme to simplify the analytical work is proposed by Coutinho (2013, p.194), when he identifies four essential roles and respective objectives for the law and its operators in public policies:

“to point out ends and to place policies in the order (law as an objective), to create conditions for participation (law as a vocalizer of demands), to offer means (toolbox) and to structure complex arrangements that make these policies effective (law as institutional arrangement)”.

In this scheme, law as an institutional arrangement focuses on the legal norms that structure the functioning, regulate the procedures more or less intensively and discipline the relationships between the various actors that participate in public policies. An even more specific cut of this legal-institutional vision turns the researcher’s vision towards the correct understanding of the system of division of legal-administrative competences in the positive order⁸.

The positive legal investigation of M&E involves the legal-institutional design contained in the legal system – above all, in the Constitution of the Republic – through the identification of functions, creation of institutions, distribution of competences and establishment of public objectives. In this sense, M&E appears in the constitutional text in close connection with the functions of political and administrative control. In the classic sense, the control function aims to contain and condition the exercise of all forms of power due to the natural pre-eminence of fundamental rights, notably freedom.

⁸ In the specific domains of Administrative Law, without the necessary connection with the sociopolitical dimension, it is also possible to refer to the organization of Public Administration: “We can speak of ‘organization of the Public Administration’ in a *broad sense*, encompassing the *subjective* and *objective meanings*, defining it as the composition and conformation of structures, competences, processes and instruments of the Administration aimed at achieving public purposes. In this broad sense, the organization of the Administration comprises different objects, such as: (a) creation and composition of subjective and objective structures suitable for the achievement of purposes; (b) determination and distribution of tasks among structures and agents according to established criteria aimed at achieving objectives; (c) provision of personnel to carry out the tasks; (d) coordination, subordination and control relationships between the different organizational structures; (e) specific structuring of the provision of each of the various activities carried out by the Administration in order to satisfactorily achieve the specific public purposes sought; and (f) control of all planned and executed processes” (DI PIETRO; MOTTA, 2019, p. 38).

Due to the essentiality of the control function – in a broad sense – for the full guarantee of democratic and republican principles, including the relevance of ensuring the centrality of the human person vis-à-vis the State, the Brazilian Constitution of 1988 is full of institutions and mechanisms of control. Regarding monitoring and evaluation, we are interested in the legal-constitutional discipline of these activities in the context of the exercise of functions linked to the control of public policies.

It should be noted that carrying out the various functions assigned to the State presupposes obtaining, managing, and using public resources. The political importance of the State's financial activity resides above all in the public budget, interpreted in a broad sense as popular authorization for collecting values from society and carrying out expenditures for its benefit. The connection of the public budget with the Rule of Law occurs from the interpretation of the "law of means" as a technique to guarantee freedom, preventing the launch of any tax without the prior consent of the representatives of the people. Likewise, the link with the principle of legality is also verified regarding the need for the same consent to carry out public expenditures. This is the reason why the State's accounting, financial, operational, property and budgetary supervision is attributed with prominence to the Legislature by Section IV of Chapter I of Title IV of the Constitution of the Republic (articles 70 to 75), provisions that apply to all entities of the Federation: if the budget laws are approved by the Legislature, it is natural that priority should be given to the inspection and control of their full implementation. It is a manifestation of the principles of the rule of law, legality, and popular sovereignty, giving the people, through their representatives, the last word in matters related to the financial activity of the State. At the same time, the control function is eminently political, instrumental in guaranteeing the harmonious and independent functioning of the powers.

The material scope of the control (or simply aspects with respect to which the various inspection actions may affect) is perceptible in the wording of article 70 of the Constitution. While the financial, accounting and patrimonial inspections do not demand major difficulties (the first covering the entire financial activity of the State; the second having as main focus the obedience to the technical accounting standards and the third focusing on the management, use and protection of public assets), budgetary inspection

and operational inspection have greater direct relevance in the control of public policies.

Budgetary inspection has as its object, as is supposed, the budget laws. It covers the process of forming the multi-annual plan, the budget guidelines law, and the annual budget law, with all the requirements demanded by the Constitution and the legal system. Budget execution is also the focus of inspection, comprising all stages of public expenditure. Budget verification is not limited to compliance with the respective regulations but also covers verification of the execution of programs, projects, and activities. The monitoring of budget results with a focus on the efficiency of public spending has gained importance through the so-called Performance Budget, defined by Nóbrega (2012) as “a procedure or mechanism linking the funds provided by the public sector and the results (outputs and outcomes) achieved, considering for that purpose information about the performance of government programs and the use of this information by decision makers, managers, politicians and society”. It is a path of no return through which the objective is to demand an adequate performance of the expenses made by the public power.

Finally, the operational inspection aims to verify the economy, efficacy, effectiveness, and efficiency. GUID 3910, International Standard issued by INTOSAI (2016), includes the following definitions:

- a) The principle of economy means minimizing the costs of resource. The resources used have to be available in due time, of appropriate quantity and quality, and at the best price.
- b) The principle of efficiency means getting the most from the available resources. It is concerned with the relationship between resources employed and outputs delivered in terms of quantity, quality, and timing.
- c) The principle of effectiveness concerns meeting the objectives set and achieving the intended results.”

Effectiveness, in turn, can be defined as the degree of achievement of programmed goals.

In partial conclusion, the Constitution of the Republic identifies the material approaches for the inspection of the financial activity of the State.

These approaches will have an impact on monitoring and evaluation activities, regardless of the body responsible for carrying out such activities.

4.2. Inspection aspects – reflecting on monitoring and evaluation activities

The financial control of the Public Administration, under the predominantly budgetary aspect, aims to provide subsidies for the best possible allocation of public resources and for the search for the quality of public spending. In this regard, it is important to understand the legal-constitutional design of budget laws in order to understand the vocation of each of them to achieve the aforementioned objectives.

The Pluriannual Plan is particularly relevant because of its essentiality in establishing guidelines, objectives and targets for capital expenditures and others arising therefrom, and for those relating to programs of continued duration (Federal Constitution, article 165, §1). It is an essential instrument for the planning of the public sector, assuming even more importance in the face of the various political and social commitments assumed by the Constitution of the Republic. The 2020-2023 PPA uses program theory as one of the fundamental foundations of its logic model: in simple words, program theory assumes that the resources provided must be transformed into actions necessary for the assistance of selected beneficiaries, seeking to achieve the results that the program intends to achieve. In this way, public policies must be translated into the language of programs, a program being “the category that articulates a set of actions (budgetary and non-budgetary) sufficient to face a problem” (MINISTÉRIO DA ECONOMIA, 2020a).

The methodological logic of the PPA is integrated by three dimensions. The strategic dimension comprises the guidelines and themes included in the priority agenda after the Chief Executive’s initiative. The tactical dimension, in turn, is composed of programs, which must contain objectives, goals and

indicators⁹, while the operational dimension is composed of budgetary and non-budgetary actions linked to the programs¹⁰.

Like the PPA, the Budget Guidelines Law also includes goals and priorities, but only for the following year, and it is also responsible for establishing fiscal policy guidelines, in line with the sustainable trajectory of the public debt, guiding the elaboration of the annual budget law, providing for changes in tax legislation and establishing the application policy of official funding agencies (CF article 165, §2). The Fiscal Responsibility Law (Complementary Law No. 101/2000) brought in its article 4 new attributions for the budget guidelines laws, among them the establishment of “norms related to cost control and evaluation of the results of programs financed with resources of budgets” (Article 4, I, “e”).

Objectives, targets, indicators and results – the mere mention of these categories in understanding the multi-year plan and the budget guidelines law already proves their essentiality for M&E processes. Even so, the issue gained new emphasis with the inclusion of §16 to article 165 of the Constitution by Constitutional Amendment No. 109/21:

Article 165

§ 16. The laws dealt with in this article must observe, as appropriate, the results of monitoring and evaluation of public policies provided for in § 16 of article 37 of this Constitution.

There is a clear intention for M&E to be used to make planning and decision-making processes on public spending more complex, in a continuous learning movement aimed at improving allocation and decision-

⁹ According to the PPA Technical Manual (MINISTÉRIO DA ECONOMIA, 2020b): “[...] it is only on the occasion of the formulation of the Programs that the objectives, goals and indicators come to be considered. Therefore, for each Program, it is necessary to set a target and an indicator capable of evidencing its annual performance and at the end of the four-year period. [...] Each PPA Program aims to address 1 (one) problem. It is important that the degree of success of the Program is measurable through a performance indicator. It is recommended that a result indicator be adopted, contained in the target, to assess the degree to which the Program has shown itself capable of fulfilling the desired objective”.

¹⁰ “Therefore, the product of an action, as a result, must aim at achieving the intended objectives in the programs. The set of products of certain actions will enable the execution of the objective and the fulfillment of the general goal established for a final program, measured by a result indicator. By rescuing the logical model as the organizer of the constitutive elements of the programs of the new PPA, the methodology aims to contribute to an adequate design of the programs, which later helps in the evaluation of public policies insofar as it clearly identifies the objectives and expected results of the program, as well as the result indicators” (MINISTÉRIO DA ECONOMIA, 2020a).

making processes. In other words, PPA and LDO cannot be elaborated without considering the results of monitoring and evaluation of public policies.

4.3. M&E in the CF88: proposal and reality

M&E was included in the Federal Constitution (CF88) through article 37 of Constitutional Amendment No. 109/21, but a complementary law with the same theme is also being processed, PLP 494/2018.

Constitutional Amendment No. 109, of March 15th, was proposed by a group of senators with a series of permanent and emergency measures to control the growth of mandatory expenditures and fiscal rebalancing in the context of the pandemic, having become known as “Emergency PEC”. In the text of the initial proposition there is no reference to the amendment of article 37 of the Constitution to insert §16. In consulting the process, it is possible to see that only in the Federal Senate the original text received 209 amendment proposals, making it difficult to verify the exact moment and, above all, the justification for the commented alteration. For the purposes of this article, however, it is sufficient to state that the text integrated into article 37 of the Federal Constitution has no direct connection with the matter originally proposed. In this sense, the inclusion of M&E in CF 88 took place through a “tortoise”, a term used in legislative processes to express the insertion of texts that are absolutely foreign to the original matter in proposals already presented. (MOTTA; BONIFÁCIO, 2021).

The text added through the creation of a new paragraph in article 37 of the Constitution has the following content:

Article 37 [...]

§ 16. Public administration bodies and entities, individually or jointly, must carry out an evaluation of public policies, including the disclosure of the object to be evaluated and the results achieved, in accordance with the law.

The performance of monitoring and evaluation activities is the duty of the Public Administration bodies and entities responsible for the implementation of public policies, in accordance with their respective

material competences and with the forecasts contained in the pluriannual plan and budget guidelines law.

A complementary law in force is richer in substantial terms in relation to how M&E was inserted in the CF 88. The proposal was born in the Federal Senate, in 2017, on the initiative of the former Senator Roberto Muniz (PTB-BA). PLS 488, of 2017, adds provisions to Complementary Law 95, of February 26th, 1998, with the aim of establishing norms and guidelines for forwarding legislative proposals that establish public policies, providing better managerial responsibility in the Public Administration.

The idea is to make the design of public policies and decision-making regarding potential State interventions more transparent, professional, and effective. According to the original forecast, approved by the Plenary of the Senate, Complementary Law 95, of February 26th, 1998, which deals with the “preparation, drafting, amendment and consolidation of laws”, would gain a new chapter, entitled “CHAPTER III-A DRAFT LAWS INSTITUTING PUBLIC POLICIES”, with the new articles 17-A, 17-B and 17-C.

In article 17-A, in addition to the mandatory prior assessment of legislative impact for bills that establish public policies, one finds the concepts of public policy and criteria of economy, efficacy, efficiency and effectiveness. Article 17-C deals with the content of the prior legislative impact assessment, consisting of (1) explanatory notes regarding the situation or problem, the proposed objectives, the solution alternatives with a comparison of the global cost-benefit of each one, the costs of the chosen solution and the budgetary sustainability of the measure, as well as (2) conclusive opinion on the constitutionality of the proposal. In terms of content, article 17-B provides for minimum items to be defined in the design of public policies, such as responsible bodies and agents, social participation in decision-making, competences, objectives, roles, responsibilities, degree of focus or universalization, taking into account the needs of the target audience and available resources, periodicity of performance evaluation, verification milestones, key indicators and targets, motivation and evidence in choice, integrity and auditing, in addition to a document management plan, for memory preservation, and a risk management plan, anticipating the main problems and the appropriate measures to deal with them.

PLS 488 was definitively approved in the Federal Senate and forwarded by its President to the Chamber of Deputies. In this Body since April 4, 2018, the PLS has been renumbered as Project of Complementary

Law (PLP) 494/2018. On May 05, 2018 it was forwarded by the President to the Constitution, Justice and Citizenship Commission and is being processed under a priority regime. As the bill has already been approved in the Senate, the prospect is that it will only be reviewed by the Chamber of Deputies, in a single round of discussion and voting, and then finally sent for sanction or enactment. However, if there is an amendment altering the wording, the text returns to the initiating Body, under the terms of article 65 of the Federal Constitution. Even if quickly approved, the legislative amendment will only enter into force ninety days after its official publication. This is a deadline for the Executive to adapt to the new system.

If the law is created without changes to its initial purpose, it can serve as a legal instrument for the creation of structures for monitoring and evaluating public policies by the federal government, either in a single body or in a segmented way, within ministries. It is expected, therefore, greater technical support on the design processes (*ex ante* evaluation) and the results of public policies (*ex post* evaluation). Another possible effect may be the creation of a smaller number of public policies. However, in an inversely proportional way, a qualitative growth of public policies is expected. In other words, perhaps one of the possible effects of passing the law is the creation of fewer, but better public policies. A possible limitation refers to the exclusive competence of the Executive Branch to carry out M&E actions. It is important that the Legislative Branch, which creates the laws that regulate public policies, also plays a considerable role in the evaluation.

Other Public Administration institutions also carry out M&E activities. The Constitution attributes to the internal control system, among others, the purposes of “evaluating the fulfillment of the goals foreseen in the pluriannual plan, the execution of government programs and the Union’s budgets” (article 74 I) and of “proving the legality and evaluating the results, in terms of effectiveness and efficiency, of budgetary, financial and patrimonial management in the bodies and entities of the federal administration, as well as the application of public resources by private law entities” (article 74, II). Internal control is exercised by the Public Administration over its own activities, within the same subjective structure. The Constitution of the Republic determines the creation and maintenance of an integrated system of internal control by the Legislative, Executive and Judiciary Branches, for the exercise of the powers contained in the items of article 74. There must be communication between the control structures of

each Branch, but without any degree of subordination or even confusion with the competences related to external control. In this way, internal control (specialization of the administrative control of each institution) is not to be confused with an internal control system, as Rodrigo Pironti Aguirre de Castro (2012) emphasizes:

It would be possible to imagine that the Constitution brings the notion that the integrated system of internal control, as referred to in article 74, imposes the understanding that the integration must be given horizontally between the branches, that is, that the internal controls are interdependent and to be guided according to a central body, common to two or more branches and structurally allocated within one of them, which would be responsible for unifying and centralizing the guidelines and determinations of this system. It should be noted, from now on, that the legal nature of the Internal Control System is effectively to be *interna corporis* to the Public Administration, that is to say, any attempt to allow a foreign body to the structure of the controlled Branch — even with the erroneous nomenclature of “internal” — may interfere with or determine the performance of this Branch violates the Constitutional text and harms the most mundane notion of Separation of Branches [...]. Thus, the criterion of acceptance of a control common to two different branches does not seem reasonable, for two fundamental reasons: a) The structural conception of the principle of hierarchy, presupposed for a deconcentrated relationship of the internal control system, cannot escape the limits of the governmental entity or the branch where it is exercised, under penalty of ineffective control, since there is only hierarchy between directly or indirectly linked bodies; and b) the notion of horizontalization of control should not be applied between different spheres of government and branches, under risk of latent unconstitutionality in the face of violation of the principle of separation of branches.

The bodies responsible for external control, in turn, are also part of the constitutional M&E microsystem. It is possible to identify in the expression “external control” a genus that encompasses different

constitutionally conformed species:¹¹ a) indirect, complex, or collaborative legislative control, exercised by parliament with the assistance of the Court of Auditors; b) control carried out directly by the Courts of Auditors.

The Courts of Auditors received privileged treatment under the Constitution of the Republic. Indeed, in addition to the relevant attribution of assisting the external control exercised by the Legislature, the Courts of Auditors have their own and autonomous constitutional powers, exercised without any interference or participation by parliament. The Courts of Auditors are autonomous and independent bodies, with their legal status delineated by the Constitution. These are bodies that assist and supervise the three branches, but without subordination of any kind to any of them. By characterizing the Courts of Auditors as essential bodies endowed with constitutional autonomy, Diogo de Figueiredo Moreira Neto (2003) emphasizes the importance of the Courts of Auditors as guarantors of the political-constitutional values of the democratic rule of law, as they perform

“indispensable functions for the functioning of republican and democratic principles, with regard to one of the most delicate aspects of any legal complex, which is, since the publication of our Magna Carta, fiscal management, such as the political-administrative disposition of resources imposed on taxpayers”.

The competence of external control for monitoring and evaluation of public policies is found, as mentioned before, in the constitutional provision of performance audit. Performance audit is carried out through the performance audit instrument (article 71, item V), as defined by ISSAI 3000 (INTOSAI International Performance Audit Standard):

“Performance auditing aims to contribute to improved economy, efficiency and effectiveness in the public sector. It also aims to contribute to good governance, accountability and transparency. Performance auditing seeks to provide new information, analysis or insights and, where appropriate, recommendations for improvement.” (INTOSAI, 2019)

¹¹ It is possible to notice that this classification does not include direct legislative control, which characterizes the typical political function of parliament, essential for the full balance and autonomy of powers and exercised through various instruments disseminated by the constitutional text.

The standards of international control entities differentiate performance auditing from public policy evaluation — although both approaches contemplate the examination of the causal relationship between governmental actions and their effects,

“Performance auditing primarily assesses cost-effectiveness, efficiency and effectiveness down to the level of the immediate result, while evaluation is defined as the examination of such results with a greater scope and time frame, considering their general and socio-economic impact. Therefore, public policy evaluation focuses on the relevance and usefulness of the policy:

- The relevance of the policy, which is the adequacy of its objectives in relation to the social, economic, or environmental needs that the policy wants to transform;
- Policy utility deals with the question of whether the policy has been useful, considering, on the one hand, all its direct (results) and indirect (impacts) effects, including unintended and unexpected ones; on the other hand, the needs that policy intended to transform” (INSTITUTO RUI BARBOSA, 2021).

5. Final remarks

The development of M&E of public policy is a relatively new phenomenon in Brazil, but there has been a swift evolution in the area. Political motivation relates to using empirical evidence from excellent work to increase the cost-benefit of public policies, thus helping to prevent increasing financial expenditure in terms of direct expenses and financial support in social and economic intervention of governments. Therefore, the evaluation of public policies in Brazil has, from its inception until today, the relocation function.

The evaluation of public policies has entered the political agenda of the federal government. In Brazil, that is noticeable in governmental decision-making in the sense of constituting an institutional structure of M&E for the entire spectrum of public policies and not only for social policies,

an area in which evaluative work is already consolidated, especially due to SAGI. The creation of the CMAP, the construction of technical booklets and the direction of IPEA's activities¹² for public policy evaluation work are concrete actions that aim at this same goal.

Two conditions must be met so that the path towards institutionalization and excellence in M&E work continues. The first concerns the institutional structuring of public policy evaluation. Currently, for example, there are ministerial structures that carry out evaluation work of quality. It is not a question of eliminating these instances of excellence, but it is necessary to create a general coordination to reduce bureaucratic costs and to improve intersectoral communication on ongoing research. It is necessary to rearrange the efforts aimed at this, by centralizing the management of the evaluative work. Thus, it is necessary to empower the CMAP.

The second condition relates to the substance of the evaluative work. There has been an investment in evaluating public policies in different sectors; taking for instance the books by Saccaro, Rocha & Mation (2018) and Sachsida (2018). However, evaluation works need to have the satisfaction of the four types of analysis as an analytical guide: products and materials, processes, efficiency, and effectiveness. What is observed in these works is the prioritization of efficiency analysis, but it is necessary to go further, to include analysis of effectiveness with more detail, in order to have a systemic view of the public policy evaluated.

One way to ensure the excellence and broad scope of evaluation work is to promote a closer relationship between the federal public administration and external researchers. There are enough qualified civil servants to do this type of work in the structure of ministries and IPEA. That's not the problem. The point is that the opening for the participation of external specialists creates a demand for the evaluative work to approach different analytical perspectives and not just an analysis of efficiency, which seems to be a trend nowadays. In addition, this approach makes it possible for external researchers to demand for improvements in organizational aspects, human resources, procedures, and investments, demands that civil servants often feel compelled to make due to the hierarchical structure of the positions and possible political constraints.

¹² In addition to the work carried out by IPEA in partnership with the CMAP and Casa Civil, the book entitled "*Políticas públicas: avaliando mais de meio trilhão de reais em gastos públicos*", organized by Adolfo Sachsida, also stands out.

The shift towards the institutionalization of public policy evaluation in Brazil has become more vigorous in recent years, which is evidence of an evolution in the field. We are on the right path, but there is still much to be improved in terms of institutional organization and excellence in evaluation work. The evaluation of public policies, when properly carried out, contributes to the improvement of people's lives, by influencing the accuracy of government actions. In political terms, it can serve as an argument to legitimize government decisions on fiscal austerity, which are often harmful marginalized population. However, being a researcher in public policy evaluation does not exclude the possibility of also politically pushing for more social and economic investments from governments. The defense for a more rational expenditure of public resources is not opposed to the desire for state presence to solve social problems. They are complementary to each other. It makes sense to require more government intervention in social issues and, at the same time, for government actions to generate more benefits at the lowest possible cost. The presence in the political agenda is reinforced by the evolution of legal-normative regulation, especially due to the inclusion of constitutional rules that indicate the need to build a new type of action by the bodies and entities that carry out activities of control of the Public Administration.

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