Leniency in anti-corruption law: Accountability in accordance with the backbone functions of State actors

Leniência na lei anticorrupção: *Accountability* segundo as funções vertebradoras dos atores estatais *(PT: 129-143)*

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ABSTRACT
This paper sets out to discuss the main repercussions of the leniency agreements jointly celebrated by the Comptroller-General's Office (CGU) and the Attorney-General's Office (AGU), pursuant to Federal Law no. 12,846/13, on the actions of other Brazilian authorities responsible for fighting corruption, in the light of theoretical propositions regarding accountability. Taking the legal literature as starting point, it was found that such settlements can be classified as having the status of discretionary administrative acts, and it is relevant to establish the potential and limitations that this status entails. Considering the need in democratic systems for horizontal control mechanisms, managed by State agencies, this article then sought, on the basis of the theory that provides for the respective backbone functions, to delimit the corresponding fields of action, placing each organ correctly within the leniency system. The final considerations stress the need for harmonious, non-invasive and coordinated exercise of powers, on the basis of their legal functions and within the boundaries for their exercise.

Keywords: leniency agreement, administrative act, accountability, backbone function

1. Introduction

Although Law 12.846 (Brazil, 2013), commonly known as the Anti-Corruption Law (ACL), has existed for a reasonable period of time, the Federal authorities' use of leniency agreements as a tool for recovering assets is currently in the process of rapid expansion, at the same time as this instrument is being refined by the bodies legally and constitutionally entrusted with the task of fighting corruption. There has been no shortage of debate concerning the power to enter into these settlements, their potential implications in the judicial and administrative spheres, and even the possibility of interference in the acts carried out in the course of negotiations.

In view of that context, this article seeks to investigate the legal nature of the leniency agreements provided for in the ACL. We shall therefore establish their main characteristics and then delimit their effects vis-à-vis other public organizations likewise involved in the investigation, prevention and punishment of misconduct by legal persons, or other connected acts of a corrupt nature.

From an academic perspective, the purpose of this article is also to propose comparison of legal concepts which have been consolidated in the doctrine with their main repercussions on the literature involving accountability in the public sector (O'Donnel, 1998; Lavalle & Vera, 2010) and the functions typical of each body in this process, on the basis of their backbone functions (Rezzoagli, 2015).

In view of its eminently theoretical nature, this investigation is underpinned by bibliographical research in the fields of Public Administration and Law, and on documentary research, in the subject areas under study, followed by research into the legislation governing the leniency agreements entered into by the Comptroller-General's Office (*Controladoria-Geral da União*, CGU) and that also involve the Attorney-General's Office (*Advocacia-Geral da União*, CGU).

This article is structured in five sections, in addition to this introduction. The first characterizes the leniency agreements provided for in the ACL as administrative acts, in order to situate them, in the second chapter, in the context of horizontal accountability. Considerations concerning the backbone functions of the different bodies involved then seek to relate the institutional vocation of each public body to the boundaries of its scope of action, which will be delineated by the respective legal powers, by the self-enforcing nature of the act and by the limits imposed by the administrative prerogative to decide on the merits. The final consideration set out to sum up the study, in keeping with the objective proposed, and also to point to possible new research fronts involving the topic.

2. Leniency agreements in the ACL as administrative acts

When we seek to discover the essence of a legal institute, the first task is to identify its legal nature. From this it will then be possible to situate it correctly in the normative framework, with all the consequences flowing from there.

Under the ALC and Decree 8.420 which regulates its application (Brazil, 2015), leniency agreements are provided for as alternatives to the imposition of other penalties established in the legislation, although their use is limited to authorities with powers to apply penalties, which is the sole prerogative of the State bodies designated by law. We may therefore point to the public nature of these agreements, and to the clear exercise of the power of *imperium* by the State when they are used.

These preliminary observations shed light on these agreements, identifying characteristics that allow us to delineate the concept, according to Celso de Mello (2006), as an administrative act:

> (...) declaration by the State (or by an entity standing in for the State – such as the holder of a public service concession), in the exercise of public prerogatives, manifested through complementary legal measures established in law, in order to comply with the same, subject to control of legitimacy by jurisdictional authorities. (p. 346)

Complementing that notion, Di Pietro (2017) enumerates the classical attributes of administrative acts, such as presumptions of legitimacy, which operates in favor of adjusting the act to the legal system, and also of veracity, as regards the content of fact attested to by the Administrative Authorities.

With regard to their imperative nature, we may point to the possibility of imposing the intention embodied in the act on third parties, without requiring their consent, whilst their self-enforceability means that there is no need to submit them for judicial intervention in order for them to have their intended effects. Lastly, conformation to type, in other words, the need for them to correspond to the arrangements established in law and intended for the purpose in mind (Di Pietro, 2017).

Lastly, no major digressions are needed to explain the simple lesson of Administrative Law that identifies the elements (or requirements) of administrative acts, which are: (a) subject endowed with powers; (b) public purpose; (c) form prescribed in law; (d) motive; and (e) object (da Cunha Jr, 2015).

In the light of those parameters, no special effort is needed to see that leniency agreements consist effectively of an administrative act that contains an intention on the part of the State to impose a penalty, despite any possible derived classifications that might arise from the cooperative and consensual elements existing over

the course of the process of their conclusion (Heinen, 2015), inherent in the negotiation process that precedes their conclusion. In any case, for the purposes of this article, it is sufficient to recognize its central dimensions, insofar as arguments as to its potential commutativity, or the possibility of negotiation, are not sufficient to detract from its core characteristics.

One final interesting aspect to be addressed is the dichotomy between discretionary and non-discretionary administrative acts, in connection with leniency. It is clear, in this regard, that negotiations between the State, when minded to be lenient, and the private party interested in a settlement, must consist essentially of a space for reciprocal concessions, subject to the terms and limits authorized by the ACL and the decree regulating its application. It is therefore reasonable to assume that the CGU's expression of intention, made in the negotiations, does not correspond to a subjective right of the company, conditional on mere satisfaction of the requirements established in law, but rather that it presupposes a necessary judgement by the administrative authorities that the course of action in view is expedient and opportune. In other words: this is unequivocally an administrative prerogative, corresponding essentially to a discretionary administrative act, although it should be recalled that the authorities' margin of discretion must still comply with the requirements established in law. That compliance has important consequences.

3. Horizontal accountability

Having identified the nature of the leniency agreements provided for in the ACL, it is necessary to look now at the role of other government agencies in relation to them, with the particular aim of ensuring that their roles are not emptied of practical meaning over the course of this important process for combating corruption. This is because, in a democracy, it is intuitively clear that no State body can seek to be immune to oversight. However, the core reason for those mechanisms is found not in the need for their existence, but in the delimitation of their scope and rules.

In relation to this issue, scholars in the field of political science and public administration (O'Donnell, 1998) have shed light on possible solutions, by perceiving that the attribution of specific legal powers to each body does not preclude other mechanisms involving multiple actors, in an environment of mutual accountability. Those actors may include the judiciary, the Federal Prosecution Service (*Ministério Público Federal*, MPF), the Federal Police (*Polícia Federal*, PF) and the Union Court of Auditors (*Tribunal de Contas da União*, TCU).

Although questions relating to the Portuguese translation of *accountability* (Campos, 1990; Pinho & Sacramento, 2009), or even to the precise demarcation of the respective concept, are not immune to differences of opinion (Koppel, 2005),

the literature has not been backward in seeking a consensus, or at least an attempt to identify the main dimensions involved.

Despite these multiple conceptions, Schedler (1999) states that it is possible to point to two elements which are indissociable from its construction, consisting of *answerability* and *sanction* (synonymous with *enforcement*). The content in these two cases is related to the need for governments to provide information and explanations of their acts, and to the permanent possibility of subjection to sanctions in the event of irregularities.

Other authors also attribute a wider field to their definition, such as Fox (2006) who points to "holding state actors responsible for their actions", preceded by allowing access to government information (a requirement closely related to transparency) and by the ascribing of responsibility, either formally or informally, making it possible to then apply sanctions.

For Lavalle and Vera (2010), the combined presence of requirements of information, justification and sanction are a relevant criterion for differentiating it from other concepts involved in democratic theory, above all in its participative dimension. They argue that this greater rigidity is justified by the need to arrive at a level of conceptual precision that distinguishes accountability from other correlated concepts (and even its underlying assumptions), but which are not to be confused with it, such as social control and transparency.

Another interesting aspect to be seen in the literature is the connection between legal and administrative sciences with regard to control. Hely Lopes Meirelles (2003) showed an intuitive understanding of how "the power of monitoring, guidance and correction that a Power, organ or authority exerts over the functional conduct of another" (p. 563), whilst Di Pietro (2017) puts forward, albeit not directly, the idea that the exercise of administrative powers is subject to mechanisms of horizontal accountability, giving the example of the accountability of authorities in the administrative and criminal justice spheres.

Moving on from the classical Cartesian conception propounded by O'Donnell (1998), accountability may be understood in its horizontal form, where internal State agencies are given the task of controlling other agencies, of equivalent status or otherwise, and in its vertical form, where the exercise of control over the State is a prerogative of the citizens themselves, occurring to a substantial extent in relation to elected representatives, who find themselves in a position subordinate to the citizens when elections are held.

For the purposes of this article, we may identify at the heart of the accountability arrangements an interface between supervisory agencies designated by law and the state body obliged to report to that agency for scrutiny and, desirably, for dissemination to the general public of the findings of its work, which include

clarification of the reasons for a given mode of action with regard to the *res publica* (Lavalle & Vera, 2010). It is here worthwhile reiterating that the possibility of applying sanctions to public agencies (and their agents), as we have seen, is an extremely central element in theories of accountability, in all its propositions.

Accordingly, having identified the body empowered under the Anti-Corruption Law to enter into leniency agreements and having shown that inter-agency supervision is not only possible, but actually indispensable, we now need to enquire again into the demarcation of powers for the exercise of those activities at federal level. This assertion is further corroborated by Pope and Vogl (2000), who endorse the need for coordination between the different State actors responsible for addressing corruption.

4. Backbone function

In order to contribute with greater clarity to the demarcation of those roles in anti-corruption systems, Rezzoagli (2015) proposes that, once the organizations involved in that process have been identified, we should identify their "backbone functions". In a lecture delivered at the University of Brasilia, Bruno Rezzoagli (2019) asserted that the degree of autonomy of each in relation to the others is of the highest importance, and their location in the State structure should be considered in the respective institutional designs, irrespective of whether the agencies work in prevention or law enforcement.

In effect, this perspective reinforces the notion of the impossibility of a given act, carried out in the exercise of the express powers of a body, being ordinarily subject to rubber stamping by a different body. By rubber stamping, in this discussion, we should understand the possibility of a public entity with supervisory powers having the prerogative, on that pretext, to substitute in full the agency that carried out the act subject to its scrutiny. As well as this amounting to an undue absorption of attributes not proper to it, it would be in breach of the fundamental principle underlying the backbone functions of all the organizations involved, both from the perspective of undue expansion of the supervisor, and the consequent shrinking of the role of the body subject to supervision. On the other hand, it cannot be ignored that supervisory functions must remain strong, coordinated and cooperative, thereby assuring the prevalence of the public interest, on pain of creating an environment favorable to arbitrariness.

The backbone functions of each body can therefore be identified as "aquellas funciones que le son propias y que ningún otro órgano podría realizar de la misma forma y con las mismas garantías de efectividad" [those functions which are proper to it and which no other body may exercise in the same way and with the same guarantees of effectiveness] (Rezzoagli, 2015, p. 10). For this author, the

full exercise of a function presupposes, for its success, the existence of highly specialized agencies, characterized by specific powers and responsibilities and provided with sufficient resources to do their work properly, which idea is further supported by Pope (2000), for whom independence is the cornerstone on which the actual existence of anti-corruption agencies is built.

It is important to mention that the Brazilian model refers to what Rezzoagli (2015) classified as the "multiple agencies model" (p.4), based on an OECD study (2008) and, when speaking of the independence of bodies, he stated:

> Hecha esta distinción, los órganos de prevención de la corrupción no deberían ser "totalmente independientes", ya que la implementación de políticas preventivas requiere de la decisión y el apoyo de la máxima autoridad del gobierno; así como de la cooperación y coordinación con otras dependencias gubernamentales, dado que aquéllas se caracterizan por poseer competencias transversales. (p. 9)
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> [Having made this distinction, corruption prevention agencies should not be "wholly independent", insofar as the implementation of preventive measures requires decisions and support from the top tier of government; in addition to cooperation and coordination with other government agencies, insofar as one of their characteristics is that they have cross-sectoral powers.]

As we have seen, those considerations bear out the idea proposed in this article, in that they admit that it is both necessary and possible to set limits on all and any government agencies, in relation to the design of strategies for addressing corruption.

5. Limits relating to powers, self-enforceability and administrative appraisal of merit

Having established the theoretical premises in the fields of accountability and the backbone functions of each public organization involved in leniency, we now need to examine the powers for the act embodied in these agreements. It is here evident that only the law can grant that power, as this is an entirely conditional element. The ACL itself, in article 16, §10, sets out the legislator's decision to explicitly designate the CGU as having sole exercise of this power, in the context of the federal executive.

This rule is also consistent with the provisions of the Constitution of the Republic (Brazil, 1988), Complementary Law no. 73 (Brazil, 1993) and the Administrative Misconduct Law (LIA – Brazil, 1992*a*), alluding to the Attorney-General's Office with regard to its powers to represent the Union in and out of court, to its consultative and advisory role in relation to the Executive and to the power to

desist, settle and agree in actions of interest to the Union (Soares, 2018). It was also the clear aim of Interministerial Order (*Portaria*) CGU/AGU 2.278 (Brazil, 2016) to reinforce that arrangement, in defining "the procedures for entering into leniency agreements" provided for in the ALC, within the sphere of the CGU, and providing for the involvement of the AGU.

Even in this context, it should be clear that there is no provision in the ALC, at least with regard to leniency, that grants powers to other organizations, whatever their constitutional or legal status, to do this on behalf of the Brazilian federal executive of foreign public authorities.

These were the grounds that the Federal Regional Court of the 4th Region (TRF4, 2017) adopted for acknowledging that the MPF has no powers to enter into leniency agreements under the ACL:

> With regard to the first aspect, Law 12.846/2013 (ACL) lays down that, within the sphere of federal executive power, the Comptroller-General's Office (CGU) has sole powers to enter into such agreements (article 16, §10). Decree 8.420/2015 (...) reasserts this rule in article 29.
> In other words, the authority empowered, in principle, to enter into a leniency agreement with the legal person involved in corrupt acts is the CGU.
> This is no impediment to the participation, which in fact appears advisable, of other bodies such as the Attorney-General's Office (AGU), the Public Prosecution Service and the Union Court of Auditors – TCU.
> (...)
> A flaw is therefore identified in the leniency agreement under consideration, which however does not void the contractual act, in view of the possibility of ratification by the CGU, or re-ratification, with the involvement of other bodies, taking into account the issue examined below, which is compensation of the public purse and the fine. (p. 6)

So, case law is another factor corroborating the need to design criteria for coordination of public actors, in order to avoid nullities due to breach of law. In any case, it is important to stress that this multiplicity of bodies should not be confused with the granting of equivalent powers, and we should reiterate that, of all of these bodies, the only one indispensable for carrying out the administrative act, as we have seen, is the CGU, by express determination of the law.

With regard to the repercussions of self-enforceability, it is relevant to recall that the law dispenses with any type of submission of leniency agreement for ratification, judicial or otherwise, for them to take immediate effect.

In this particular respect, it should be observed that their characterization as extrajudicial enforceable titles (article 37, III, of Decree 8.420) does not undermine their self-enforceability. On the contrary, it confirms this, insofar as the need for enforcement will only arise if the company benefiting from them fails to comply with their terms. In other words, only in the event of the agreement ceasing to produce its regular and natural effects, on the terms agreed, does the law empower the authorized body to use judicial means.

A further observation should be made in this respect. Although leniency agreements, as we have seen, are preceded by a negotiation process, they are an expression of the State's intention of applying sanctions and require the private party, among other things, to identify the other persons involved in the offence, and also to comply with the penalties (fine) and to return the amounts assessed in the course of the negotiations, without prejudice to the obligation to pay full relief for damages that may be assessed in other ways, such as through audit investigations by the Union Court of Auditors (article 16 of the ALC).

Lastly, and more significantly, we may point to the consequences of the discretionary nature of this act: its merits, i.e. the criteria of convenience and appropriacy taken into consideration by the public administrative authorities, which is an area closed to intervention by the courts, supervision being limited to possible defects in relation to the legal system (legality). The Federal Supreme Court (STF, 2017) has produced and consolidated ample case law on this matter:

> It has been firmly held by this court that, in keeping with the constitutional principle of the separation of powers, the judicial authorities can only assess the merits of an administrative decision in respect of its (un)lawfulness or a possible abuse of power. (p.1)

Even today, the court has not wavered from this position (STF, 2019):

> Aside from this, it should be stressed that decision under appeal is consistent with the previous decisions of this court to the effect that assessment by the judicial authorities of administrative acts is limited to their legality and compliance with guarantees of adversarial process and sufficient defense, the merits of an administrative act falling outside the scope of judicial appraisal. (p. 11)

The above can therefore be summarized in the idea that, once entered into by the authority designated by law, leniency agreements constitute administrative acts, which are self-enforceable by nature and comply with specific criteria of convenience and appropriacy which cannot be substituted by the intentions of any other body or authority of the Republic, on pain of undeniable breach of the inherent system of checks and balances.

Nonetheless, it is still legitimate to enquire into the circumstances and manner in which those agreements might serve to trigger the action of other State subjects, in view of the position they occupy in the institutional framework, insofar as the powers of the other organizations involved in the Brazilian anti-corruption macro-system must be preserved. The ideas set out below are proposed as a contribution to answering this question.

With regard to exercise by the MPF and the Federal Police of their backbone functions in prosecuting crime, it is not difficult to point to supervisory actions through various instruments available to these institutions under the law (inquiries and judicial actions, for example), in the event of a criminal offence being committed in the course of the negotiation, or even the performance, of leniency agreements, justifying the application of penalties to the persons responsible.

In addition, it is important to recall that certain instances of administrative misconduct committed, under the same conditions, by public agents involved in those agreements, should also be subject to accountability measures, not only on the part of the MPF, but also that of all those with legitimacy to bring civil actions, such as the AGU itself, which can (and must) act in relation to its own members if this is necessary to secure proper conduct and public property.

It should nonetheless be understood that, despite the constitutional status of the bodies in question, none of the powers highlighted here are able to touch on the merits of the agreements. This is because this form of supervision, geared specifically to the need to address possible illegalities in the process, relates to the conduct of the agents involved, the deleterious effects of which, if it is proven that the administrative act is flawed, will be excised reflexively, based on the illegality subject to control. In other words, the criteria of convenience and appropriacy, in the hypotheses mentioned, cannot be appraised for a logical reason, because they are non-existent since the origin of the act.

Without prejudice to the above, one question that has generated heated debate between public organizations has been the possibility of the TCU, the external regulator designated by the Federal Constitution (Brazil, 1988), taking action in relation to the terms established in leniency agreements. The justification for that would lie in the broad powers conferred on it by the actual Constitutional Charter, and also by Law 8.443 (Brazil, 1992*b*).

As already stated, in a genuine democratic system, no organ or entity can claim to be exempt from accountability of any kind, on pain of subverting the various fundamental values of the Republic. On the other hand, the range of powers and responsibilities assigned to a given public organization, whilst broad, can never be understood as unlimited, on pain of creating a undue subordination of the other actors, which would create a situation as grievous, or more so, than that of our

first proposition. In view of this, coordination of clearly demarcated powers and responsibilities of each body, in accordance with their respective backbone functions, presents itself as the best way forward.

The actual wording of article 70 of the Constitution tends to reject the idea of subordination. Indeed, its content explicitly reinforces the idea of coordination, when it asserts that oversight of the Union and its entities is entrusted not only to the National Congress, with the help of the TCU (as per article 71), but also to the "internal control system of each Branch". Accordingly, any interpretation that unduly excludes or minimizes the role of internal oversight bodies (in the case of the Union, the CGU) will clearly be unconstitutional.

Another question that could be raised concerning the limits of oversight of account would be analogous to that considered above in relation to the judicial branch: could the merits of administrative decisions be subject to intervention by the TCU (Court of Auditors), at least in respect of that administrative power (accounts)? The answer is likewise no. According to Odete Medauar (1990, p. 121) "it is not possible to think of an appraisal of the merits of accounts, i.e., of the convenience and appropriacy, because that would take away from the authority the power to decide on the application of public resources". This understanding may be extended to leniency agreements, without any major obstacles of reasoning, insofar as the CGU, in this connection, is the authority with the decision-making power and that, without a shadow of doubt, will have an effect on the public purse, with responsibility also for ensuring strict compliance with the margin of discretion granted by law.

It may therefore be seen that the most correct reading of any normative act concerning the need for external control (above all, of accounts) over leniency agreements cannot be interpreted to the effect that all the aspects relating to their conclusion, especially the terms on which they were negotiated, must be subject to material scrutiny. In other words, there are areas of the exercise of powers by the CGU which cannot be touched upon by the TCU, unless this is accepted by the actual body entering into the agreement.

Even once those limits are established, it is undeniable that there must be audit oversight over leniency agreements. Starting out from the principle established in law that full reparation of the damage by the legal person in question cannot in any circumstance be precluded and, at the same time, considering that the TCU has tools able to consolidate those amounts, it is necessary to acknowledge that normative space exists for the Court to express its opinion on the amounts in question.

On this matter, the current situation reveals an important issue: as recently disclosed (CGU, 2019), the Comptroller-General's Office and the Attorney-Gener-

al's Office published details of the leniency agreements signed under the ACL. Of the various provisions, one clause common to the six agreements disclosed is that their signing does not preclude the powers of the TCU (Union Court of Auditors) established in article 71 of the Constitution.

It should be noted, from this well-judged provision, that the CGU and the AGU are concerned with preserving and respecting the backbone functions of the various public actors making up the Brazilian anti-corruption system. As regards that point, it is important to note that the Brazilian legal system does not establish that the actions or powers of a given State organ prevails over the others, In effect, what we find instead is systematized fields of responsibility and powers, even if imperfectly drawn – some of them actually shared (competing powers), as in the case of judicial action in respect of administrative misconduct, where both the Public Prosecution Service and the legal persons concerned are recognized as having standing to bring proceedings (Article 17 of the Administrative Misconduct Law [AML]).

This harmonious and cooperative joint approach is observed, for example, in connection with the Administrative Misconduct Law, which, incorporating the rules established in article 51 of the United Nations Convention against Corruption (Brazil, 2006), includes an express provision in article 17, §2, to the effect that, where appropriate, the Public Treasury will take the steps needed to complement the securing of compensation for misappropriation of public assets. It may be gathered from this that, as concerns judicial actions brought in relation to administrative misconduct, which in the last analysis deal with accountability for corrupt acts, maximum reparation of the damages suffered by the State (more correctly, damages suffered by public sphere, by the collective) must in all cases be sought, the Public Treasury having powers either to bring proceedings to this end (article 17, *caput*, AML), or join in actions brought by the Public Prosecution Service (article 17, §3, AML) or else, where appropriate, bring actions to complement the compensation (article 17, § 2, AML).

So because the ACL also incorporated this spirit of complementarity in the actions of different bodies, and also the need to seek the most ample reparation of the damage suffered by the State, article 16, §3, of that law expressly provides, as we have seen, that a leniency agreement does not excuse the legal person from the obligation to pay full compensation for the damage cause, which compensation, if not secured by the leniency agreement, may be sought by the Public Treasury, and by the other bodies with standing to do so, in accordance with the specific features of those institutions in line with their backbone functions.

In the final analysis, it is understood that a leniency agreement under the ALC (which under no circumstances stands in the way of the complementary oversight

activities of the other state actors) constitutes an administrative act preceded by a negotiation process in which the State's intention to apply penalties is manifest, thereby permitting the amounts owing to be paid to the State and the public entities injured by the act of corruption, not lending itself therefore to any of the hypotheses provided for in article 71 of the Constitution, which fact precludes the possibility of the TCU investigating those acts except with regard to the amounts relating to the damages cause or else of seeking claim for itself the power of conducting and concluding that negotiation process.

It follows that the optimum point at which the constitutional mission of the Court of Auditors is not repudiated whilst preserving the powers of the bodies with legitimacy to enter into leniency agreements is precisely that were we admit the possibility of external control, in a legitimate process of horizontal accountability, but limited to issues of the legality of the agreement, without touching on the merits of the act carried out on a discretionary basis, and also limited to seeking full compensation of the damage caused to the public purse, if it is subsequently found that, from an accounting point of view, the terms agreed by the CGU are insufficient. That reasoning backs up the idea that any obvious arbitrariness or illegality cannot hide from the oversight exercised by other agencies. Instead, such arbitrariness or illegality must be fiercely combated, both only to the extent to which they are constrained by the limits of the powers establish in law and the Constitution. Any step beyond that point would also amount for a further instance of arbitrariness, but here disguised as oversight.

It is opportune to note that those prerogatives in no way prejudice the duty of transparency or even good faith in the provision of information between government agencies, insofar as the public interest is the point of equilibrium on which all powers are based. It is in this cooperative context that the bodies involved must seek not only to maximize their potential, but also to observe the limits governing their actions.

6. Final considerations

In view of all the above, the study presented in this article allows us to assert that a leniency agreement is a discretionary and self-enforcing administrative act, for which the powers lie with the CGU, which has consequences that limit the actions of other organs with regard to merits of the agreement, although it is unthinkable to go away with the other organizations involved in the horizontal accountability process. However, their actions must be consistent with the design of their backbone functions, without encroaching on the criteria of convenience and appropriacy, except in cases where the bodies legally empowered to enter into those agreements explicitly invite their intervention.

Notwithstanding these considerations, it is clearly important to look more deeply at the possible interfaces between accountability and the backbone functions of Brazilian public authorities, in order to arrive at a better understanding of the phenomenon of inter-agency oversight and to add new possibilities of constructive action, with new ideas in the process, driven more by a sense of collaboration and by the Republican spirit than by legal imposition.