



# The Constitutional Amendment 95 (Brazil) and its impacts on MDE investments

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**ABSTRACT.** This study aims to understand the main consequences of the *Emenda Constitucional (EC)* - Constitutional Amendment - no. 95/2016 (Brasil, 2016a) in relation to the fulfillment of the goals proposed by the *Plano Nacional de Educação (PNE)* - National Education Plan - (2014) (Brasil, 2014), with emphasis on goal 20, which proposes the allocation of public resources for education. To achieve the objective of this study, a qualitative analysis of the national legislations that support education was carried out, in addition to reviews and bibliographic analysis in scientific articles that discuss the Brazilian education funding policy and the fiscal austerity supported by the Amendment in screen or also called *PEC do Teto de Gastos* - PEC of the Spending Ceiling -. In short, it was found that the establishment of a spending limit for primary public spending - non-financial expenses - of the Executive Power determined by EC no. 95 has resulted in a profound change in national accounts in what refers specifically and particularly to the public budget of the federal sphere of the country, allowing the Brazilian State the allocation of significant portions of the Union budget for the payment of public debt to the detriment of investments in social policies and, consequently, in education, which makes the effectiveness of goal 20 of the PNE unfeasible.

**Keywords:** *emenda constitucional* no. 95/2016; *plano nacional de educação*; education financing; public debt and social expenditure.

## A Emenda Constitucional 95 e seus impactos nos investimentos em MDE

**RESUMO.** Este estudo objetiva compreender quais as principais consequências oriundas da Emenda Constitucional nº 95/2016 (Brasil, 2016a) em relação ao cumprimento das metas propostas pelo Plano Nacional da Educação (PNE/2014) (Brasil, 2014), dando ênfase à meta 20, que propõe destinação de recursos públicos para a educação. Para atingir o objetivo deste estudo, foi realizada uma análise qualitativa das legislações nacionais que amparam a educação, além de revisões e análises bibliográficas em artigos científicos que discorrem acerca da política de financiamento da educação brasileira e da austeridade fiscal sustentada pela Emenda em tela ou também denominada 'PEC do Teto de Gastos'. Em suma, constatou-se que o estabelecimento de um limite de gastos destinados às despesas públicas primárias – despesas não financeiras – do Poder Executivo determinado pela EC nº 95 tem resultado numa mudança profunda nas contas nacionais no que se refere, de forma específica e particular, ao orçamento público da esfera federal do país, permitindo ao Estado brasileiro a destinação de parcelas significativas do orçamento da União para o pagamento da dívida pública em detrimento dos investimentos em políticas sociais e, conseqüentemente, em educação, o que inviabiliza a efetivação da meta 20 do PNE.

**Palavras-chave:** emenda constitucional nº 95/2016; plano nacional de educação; financiamento da educação; dívida pública e gastos sociais.

## La Enmienda Constitucional nº95 (Brasil) y sus impactos en las inversiones en MDE

**RESUMEN.** Este estudio tiene como objetivo comprender las principales consecuencias derivadas de la Enmienda Constitucional brasileña núm. 95/2016 (EC No. 95/2006) (Brasil, 2016a) con relación al cumplimiento de las metas propuestas por el Plan Nacional de Educación (PNE / 2014) (Brasil, 2014), destacando la Meta 20, que propone la asignación de recursos públicos para la educación. Para lograr el objetivo de este estudio, se realizó un análisis cualitativo de la legislación nacional que apoya la educación, así como revisiones bibliográficas y análisis en artículos científicos que discuten la política brasileña de financiamiento de la educación y la austeridad fiscal apoyada por la Enmienda aquí discutida conocida como 'PEC do teto dos gastos' (Propuesta de Enmienda Constitucional del techo de gasto). En resumen, se encontró que el establecimiento de un límite de gasto para el gasto público primario — gasto no financiero

— del Poder Ejecutivo determinado por la EC No. 95/2006 ha resultado en un cambio profundo en las cuentas nacionales específicamente con respecto al presupuesto nacional en la esfera federal del país, permitiendo al Estado brasileño destinar cuotas del presupuesto del Estado para el pago de la deuda pública en detrimento de las inversiones en políticas sociales y, en consecuencia, en educación, lo que hace inviable el logro de la Meta 20 del PNE.

**Palabras-clave:** Enmienda Constitucional n° 95/2016. Plan Nacional de Educación. Financiamiento de la educación. Deuda pública y gasto social.

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## Introduction

The financing of Brazilian education has occurred in different ways throughout the country's history, and the way it is currently carried out has its origin in the 1934 Constitution, the first republican legislation nationwide to link the allocation of a minimum percentage of tax revenue to the financing of education. Since then, public policies aimed at financing education have been created, as is the case of *Fundo de Manutenção e Desenvolvimento da Educação Básica e de Valorização do Magistério (Fundeb)* - Fund for Maintenance and Development of Basic Education and for the Appreciation of the Teaching Profession - (in effect from 2007 to 2020), the substitute for *Fundo de Manutenção e Desenvolvimento do Ensino Fundamental e de Valorização do Magistério (Fundef)* - Fund for Maintenance and Development of Fundamental Education and for the Valorization of Teaching - (which was in effect from 1997 to 2006). The Fundeb has the function of redistributing the resources tied to education throughout the Brazilian territory, foreseen and supported by the Federal Constitution of 1988, making operational the distribution of resources for basic education and programs for young people and adults. This fund is considered by the Ministry of Education and Culture (MEC) a fundamental part of the recent advances in expansion, quality, and equity (Brasil, 2018). In 2020, there was the approval of the new Fundeb, which was consolidated as a permanent instrument of normatization and operational distribution of the financing of Brazilian education (Brasil, 2020d).

Regarding the financing of education, Target 20 of the *Plano Nacional de Educação (PNE)* - National Education Plan - (2014-2024) determined that public investment in public education should be expanded to reach at least 7% (seven percent) of the country's *Produto Interno Bruto (PIB)* - Gross Domestic Product - in the fifth year of the Plan (2019) and at least the equivalent of 10% (ten percent) of GDP by the end of the decade (2024). The expansion of investments in education, according to the federal government, should ensure that the expansion needs are met, with guaranteed quality standards and conditions of equity (Brasil, 2014).

Two years after the approval of the PNE and in the midst of an agitated, turbulent political and economic scenario, deeply anchored in an aggressive policy of destruction of the social rights established since the 1988 Constitution, the then president of the Republic, Michel Temer, presented to the House of Representatives the PEC n° 241 (in the Senate, the *Proposta de Emenda Constitucional (PEC)* - Proposal for Constitutional Amendment - no. 55, also known as the *PEC do teto dos gastos* - PEC of the Spending Ceiling). Approved and published in the Official Gazette on December 15, 2016, the subsequent *Emenda Constitucional (EC)* - Constitutional Amendment - no. 95 limits, for 20 years, the increase in the Union's primary expenses for each of the powers (Executive, Legislative and Judiciary) and for bodies with administrative and financial autonomy. This limitation may restrict the Union's investments in the area of social policies (including health and education). With this new fiscal regime, expenditures are fixed based on the 2016 budget. In the case of health and education, EC no. 95/2016 became effective as of fiscal year 2018 (Brasil, 2018).

According to the government, the EC no. 95/2016 would be the most effective alternative to overcome the fiscal crisis arising from the exaggerated expansion of primary expenditure, which occurs in the opposite direction to the growth of the country's revenue (which is in decline since 2014), making it impossible for the federal government to raise revenue (Dutra & Brisolla, 2020). However, in addition to minimizing the State's role in public policies, especially in health and education, EC no. 95/2016 also presents an austere management policy, which encourages the reduction of spending in sectors of society that should be encouraged, thus creating a vicious circle that, instead of promoting the overcoming of the crisis, only promotes and amplifies the problem, bringing significantly negative consequences for the population.

Given these considerations, we sought to analyze the relationship between EC no. 95/2016 and the PNE, questioning how the EC has impacted the effectiveness of Target 20 presented by the PNE.

The article<sup>1</sup> is divided into five parts: the first presents some aspects about the financing of Brazilian education and how this is treated in the Federal Constitution of 1988 (Brasil, 1988), in addition to highlighting the performance of Fundeb - an important fund responsible for the redistribution of financial resources throughout the national territory; the second briefly addresses the origin of such resources; the third discusses about the PNE, highlighting its objectives and goals, the fourth deals with the fiscal crisis experienced by Brazil in 2016 and how it influenced the presentation of the PEC no. 241 (now EC no. 95/2016); and, finally, the fifth part analyzes the relationship between the PNE and the EC no. 95/2016, seeking to understand how the different levels of education are affected by the Amendment, especially Goal 20, responsible for the budgetary and financial execution of all other goals, highlighting the impacts of EC no. 95/2016 on the allocation of resources of the Federal Government for expenses with maintenance and development of education.

## The financing of Brazilian education: some aspects

The constitutional guarantee of allocating a minimum percentage of tax revenue to fund education is a long-standing concern. In the United States, as early as the 15th century, there were already laws mandating the appointment and payment of salaries for reading and writing teachers in towns with more than 50 households (Pinto, 2018).

In Brazil, the financing of education is marked by three important moments: the first corresponds to the period of Jesuit monopoly (1549 to 1759), in which the resources for the maintenance of schools were "informally made through donations", evidencing a detour of responsibility of the Crown of Portugal regarding the funding of education. This form of financing remained until 1564, when the Portuguese government established a financial subsidy destined especially for the schools, thus allowing the growth and expansion of the Society of Jesus throughout Brazil (Loureiro, 2016).

The second moment, started in 1772 by means of the Law Letter of November 6th of the same year - whose objective was to regularize the teaching profession, standardize the payment of teachers and make the whole system of classes effective (Silva, 2005) was funded by the 'Literary subsidy', a tax withheld from the sale of wine, brandy and vinegar. This subsidy lasted in the country until 1839, although already in 1827 the amounts collected were insufficient to maintain the schools (Silva, 2005).

The third moment began in 1934, "[...] with the establishment of the constitutional binding of resources for education and that, except for interruptions in dictatorial periods, remains in force until today" (Pinto, 2018, p. 847). After four new constitutions, the one in force in contemporary Brazil is the 1988 Constitution (Brasil, 1988), the seventh drafted in the republican period.

From it, two important public policies aimed at national education were approved with regard to the mechanisms of distribution and operationalization of resources for the financing of education and the other to the planning and execution of actions for Brazilian education in compliance with the already constitutionally provided: the first refers to Fundef, created through EC no. 14/1996 and replaced in 2007 by Fundeb; the second, in turn, is linked to the approval of the PNE, which will be addressed later (Brasil, 2021).

The financing of Brazilian education demarcated according to what was established by the Federal Constitution of 1988 that, in its art. 211, assigns to the states and the Federal District the responsibility for maintaining, as a priority, the elementary school (final years) and high school; and to the municipalities, the elementary school (initial years) and early childhood education (Brasil, 1988), the educational disparities between the regions of the country have always been huge, as pointed out by Fernandes (2009), Fundef was proposed in the direction of operationalizing the distribution of resources globally established, as recalled by Fernandes (2009):

If the resources for education come mostly from taxes collected by states and municipalities, there will certainly be great differences, since revenues reflect the vigor and evolution of economic activities of each federated entity and expenses are a function of higher or lower birth rates of the local population (Fernandes, 2009, p. 26).

Based on the arguments retrommented:

President Fernando Henrique Cardoso, upon taking office in 1995, was convinced that the total tax revenues linked to MDE were sufficient to finance public education, lacking only to prioritize compulsory elementary education, to institute

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a form of redistribution of MDE resources within the states and their municipalities and to supplement the revenues of some states that did not reach a nationally defined minimum annual amount per student (Fernandes, 2009, p. 27).

Therefore, in September 1996, Fundef was created by EC nº 14, regulated in the same year by Law nº 9.424 and Decree nº 2.264 (Brasil, 1997). According to the MEC, Fundef changed the financing structure of elementary education (1<sup>st</sup> to 8<sup>th</sup> grades of the old 1<sup>st</sup> grade), by subvincing a portion of the resources to this level of education, besides having introduced new criteria for distributing and using such resources, promoting the sharing of these resources between State Governments and Municipal Governments according to the number of students served in each education network (Brasil, 2007).

Fundef, in effect for 10 years, was changed and replaced by Fundeb as of January 1<sup>st</sup>, 2007 and remains in effect with the legal and constitutional changes that were introduced and approved in 2021. Fundeb, created by EC nº 53/2006 and in force until 2020, is responsible for redistributing the financial resources linked to education throughout the Brazilian territory, financing all stages of basic education (from kindergarten to high school) and allocating resources for programs for young people and adults, in compliance with what is established in art. 211 of the Constitution, which makes the Union responsible for financing federal public educational institutions and for redistributing and supplementing the resources, as stated in paragraph 1: "In order to guarantee equalization of educational opportunities and a minimum standard of teaching quality through technical and financial assistance to the States, the Federal District and the Municipalities" (Brasil, 1988).

Fundeb distributes the funds considering the social and economic development of the regions, that is:

The complementation of the money applied by the Union is directed to the regions in which the investment per student is lower than the minimum value fixed for each year. In other words, the main objective of the Fundeb is to promote the redistribution of resources linked to education (Brasil, 2007).

According to the justification of the MEC (Brasil, 2007), these resources are distributed according to the number of students enrolled in basic education, whose quantity is based on school census data from the previous year. Thus, states and municipalities that have a large demand for students and, concomitantly, a reduced capacity to finance education, will be the main beneficiaries of the resources from the Fund (Fernandes, 2009).

To monitor and control the distribution, transfer and application of resources, according to the Ministry of Education (Brasil, 2007), councils were created, whose members are trained by the *Fundo Nacional de Desenvolvimento da Educação* (FNDE) - National Fund for Education Development -. The FNDE also provides technical support to the states, Federal District and municipalities and monitors the application of resources, among other duties. Other institutions involved in the operation of Fundeb are: the *Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira* (INEP) - National Institute of Educational Studies and Research Anísio Teixeira -, responsible for conducting the school census and making the data available; and the Ministry of Finance, which defines the estimated revenue of the Fund and makes the resources collected available for distribution; among others.

In general terms, one of the main differences between Fundef and Fundeb, besides the broadening of the scope of education levels and modalities, refers to the fact that the actions developed by the former focused exclusively on primary education, disregarding the inclusion of children of school age in early childhood education and young people entering high school. On the other hand, Fundeb seeks to reach this part of the population, until then incorporated in other financing mechanisms linked to the *Manutenção e Desenvolvimento do Ensino* (MDE) - Maintenance and Development of Education -, promoting actions that encourage and ensure access to basic education. In quantitative terms, such coverage has surpassed the 32 million students served by Fundef to more than 47 million by Fundeb, in the municipal and state networks of all types of education (Fernandes, 2009, 2020).

On December 25, 2020, the New Fundeb was approved, regulated by Law 14.113/2020, as described below:

Effective as of January 1, 2021, the New Fundeb becomes permanent in nature, which represents a great achievement for Brazilian education. This does not imply, however, the impossibility of a new change in the constitutional text, since the National Congress will review the functioning of the Fund. The first review is scheduled to take place in the year 2026, as pointed out by Constitutional Amendment No. 108 of August 27, 2020, and will subsequently be held every 10 years (2036, 2046 and so on) (Brasil, 2021, p. 11).

According to official data from the federal government, the New Fundeb requires an increase in budgetary commitment and legal security in its processing: "[...] in order to ensure that all its provisions are effectively

applied according to the capabilities of each of the agents involved" (Brasil, 2020, p. 11). Thus, while in the previous Fundeb the Union's complementation percentage was at least 10%, as of the New Fundeb, this percentage becomes at least 23% of total resources, which will be invested progressively and should be fully implemented by 2026 (Brasil, 2020d).

Although its effectiveness began in January 2021, the transition rules for the New Fundeb determine that the distribution of resources in the months of January, February and March will still consider Law No. 11.494, which regulated the Fundeb from 2007-2020 by virtue of: "[...] so that public agencies, entities and all others involved with the Funds can reorganize themselves according to the changes, without compromising the public education networks and students" (Brasil, 2020d, p. 21).

## The origin of the financial resources

The above has addressed only some aspects of the functions performed by Fundeb in relation to the financing of education. However, it is noteworthy to highlight the origin of such resources and how they can be used by educational institutions that, despite receiving it, have certain restrictions to use it.

The *Lei de Diretrizes e Bases da Educação Nacional* (LDB) - Law of Directives and Bases for National Education (Law no. 9.394/1996) (Brasil, 1996), approved on December 20, 1996, establishes the directives and bases for education throughout the Brazilian territory based on the determinations of the 1988 Federal Constitution (Brasil, 1988). The LDB "[...] disciplines school education, which is developed predominantly through teaching, in proper institutions" (Brasil, 1996, p. 7, art. 1º, §1º).

Thus, it is also one of the legislations responsible for regulating the use of financial resources related to the educational area.

In Art. 68, which deals with the allocation of funds to education, the LDB establishes:

Public resources destined to education are those originating from: I - revenue from taxes proper of the Union, the States, the Federal District and the Municipalities; II - revenue from constitutional and other transfers; III - revenue from salaries-education and other social contributions; IV - revenue from tax incentives; V - other resources provided by law (Brasil, 1996).

Among other legally foreseen resources are those from oil and natural gas exploration, which should be one of the main sources of funding for some educational projects, such as the PNE (Brasil, 2014).

According to art. 70 of the LDB (Brasil, 1996), the resources destined to the MDE in order to achieve the "[...] basic objectives of educational institutions of all levels [...]" comprise only what is intended to:

I - remuneration and improvement of teaching staff and other education professionals; II - acquisition, maintenance, construction, and conservation of installations and equipment necessary for education; III - use and maintenance of goods and services related to education; IV - statistical surveys, studies, and research aimed primarily at improving the quality and expansion of education; V - performance of the necessary intermediate activities for the functioning of the educational systems; VI - concession of scholarships to students from public and private schools; VII - amortization and costing of credit operations destined to meet the provisions in the items of this article; VIII - acquisition of didactic and school material and maintenance of school transportation programs (Brasil, 1996).

The LDB also determines that only those investments directly aimed at improving the quality of the Brazilian education system are considered investments in education. To leave no doubt, art. 71 of the LDB also defines what is not considered expenditures with MDE, which includes research not linked to educational institutions, infrastructure works (even if they directly or indirectly benefit the school environment), supplementary feeding programs or social assistance (medical, dental, pharmaceutical and psychological), among others (Brasil, 1996).

In general, in addition to investing in the training and remuneration of teachers, the purchase and maintenance of equipment, teaching materials, and other goods and services related to education, these resources will also fund studies, research, and expenses necessary to comply with national guidelines and norms, as is the case of the PNE, which will be described below (Brasil, 2014).

## *Plano Nacional de Educação: the path towards overcoming educational inequalities?*

As previously mentioned, since the 1988 Federal Constitution (Brasil, 1988) two important public initiatives have been approved in the educational field: the first, already mentioned, refers to Fundef, later replaced by Fundeb; the second is the approval of the PNE, which will be discussed below.

During the Fernando Henrique Cardoso administration, a PNE was approved, instituted by means of Federal Law no. 10.172, of January 9, 2001, and in effect until 2011. Later, in accordance with the main legislations that regulate education in the country (Federal Constitution of 1988 and LDB 9.394/1996), on June 25, 2014, Federal Law no. 13.005/2014 was sanctioned, instituting the PNE. The new document "[...] determines: guidelines, goals, and strategies for education policy in the period from 2014 to 2024 [...]" (Brasil, 2014), in addition to seeking to ensure in a more objective way a minimum standard of quality of education in the form of the *Custo Aluno-qualidade Inicial* (CAQi) - Initial Student-Quality Cost - (Pinto, 2008).

The PNE (2014-2024) was elaborated in collaboration between the Union, the states, the Federal District and the municipalities, and constitutes an important milestone for Brazilian public policies, especially those directed to national education, provided that it was rigorously implemented in all its goals and actions and also advances in the increase of the percentage of PIB invested in education. Through its goals, the PNE proposes that federative entities and civil society act to consolidate an educational system that promotes access and permanence of students in school, ensuring the right to education (enshrined by the Federal Constitution of 1988 and other legal instruments, such as the LDB), as well as training for work and the exercise of citizenship, thus seeking the realization of an educational process in its entirety (Brasil, 2014).

In general terms, the guidelines and goals of the PNE focus especially on reducing educational inequalities, with proposals to act on the "[...] need to expand access to education and the average schooling of the population," in addition to overcoming the "low quality of learning" and the "[...] challenges related to the appreciation of education professionals, democratic management and financing of education" (Brasil, 2014, p. 11). The general objective of the PNE, according to the MEC, consists in the development of public policies in favor of equitable and democratic improvement of access and quality of Brazilian education, inducing and articulating the federated entities in search of achieving this purpose (Brasil, 2014).

The PNE presents proposals aimed at early childhood education, primary and secondary education, in addition to considering inclusive education, literacy, comprehensive education, democratic management, funding and the teacher career plan, among other aspects, including higher education. The national scope of the PNE is valid for 10 years from the date of publication of Law 13.005/2014. The document is composed of guidelines and goals that aim to ensure the fulfillment of its central objective. There are ten cross-cutting guidelines that express a broader level of problematization, representing a "[...] historical consensus of political and social forces in the country, which should guide all plans, from their preparation to their final evaluation" (Brasil, 2014). Therefore, they reference all the goals, synthesizing consensus about the main challenges of Brazilian education.

From this level of problematization, the PNE is structured into more specific goals and strategies, which allow for a more objective monitoring of its execution. The twenty goals present in the PNE represent what is expected to be achieved in each dimension of Brazilian education, while the strategies outline the paths to be taken through public policies in order to ensure compliance with the plan, paths that, since the EC no. 95/2016, have encountered greater difficulties in its trajectory, particularly regarding Goal 20, object of study of this research, which is responsible for ensuring resources for the implementation and execution of all the planned goals.

Regarding the financing of education, the eighth guideline determines the "[...] establishment of a target for the application of public resources in education as a proportion of the *Produto Interno Bruto* (PIB), which ensures meeting the needs of expansion, with quality standards and equity" (Brasil, 2014, p.13).

Unlike other guidelines, which present a larger number of goals, the guideline in question refers exclusively to Target 20, which provides:

[...] the expansion of public investment in public education to reach, at a minimum, the level of 7% (seven percent) of the country's *Produto Interno Bruto* - PIB in the 5<sup>th</sup> (fifth) year of this Law (2019) and, at a minimum, the equivalent of 10% (ten percent) of PIB by the end of the decade (2024) (Brasil, 2014, p. 235).

This expansion of investments in education, according to art. 2 of Law no. 13.005/2014 (which established the PNE), should ensure the "[...] meeting the needs of expansion, with quality standards and equity" (Brasil, 2014, p. 32, Art. 2).

In order to achieve the goal proposed by Target 20, the plan established 12 strategies that indicate the paths to be built and followed for the execution of the financing of the Brazilian educational system. Among them are:

20.1 Ensure permanent and sustainable funding sources for all levels, stages and modalities of basic education, observing the policies of collaboration among the federative entities, [...] in order to meet their educational demands in light of the national quality standard; 20. 2 Improve and expand the mechanisms for monitoring the collection of social contribution of salary-education; 20.3 Allocate to the maintenance and development of education, [...] part of the participation in the result [...] by the exploration of oil and natural gas and other resources [...]; 20.9) [...] 20.9) [...] establish the cooperation norms between the Union, the States, the Federal District, and the Municipalities, in educational matters, and the articulation of the national educational system in a collaborative regime, with balance in the distribution of responsibilities and resources and effective fulfillment of the redistributive and supplementary functions of the Union in combating regional educational inequalities, with special attention to the North and Northeast regions; 20. 10 The Union will be responsible, in the form of law, to complement financial resources to all states, the Federal District and the municipalities that are unable to reach the value of *Custo Aluno-qualidade Inicial* and, subsequently (CAQi), the *Custo Aluno-qualidade* (CAQ) (Brasil, 2014, p. 21-35).

According to § 5º of art. 5 of Law nº 13.005/2014:

The portion of the participation in the results or of the financial compensation for the exploration of oil and natural gas will be destined to the maintenance and development of education, in addition to the resources bound under the terms of art. 212 of the Federal Constitution, besides other resources provided by law, in the form of specific law, with the purpose of ensuring compliance with the goal set forth in item VI of art. 214 of the Federal Constitution (Brasil, 2014, p. 45).

However, this important national source of resources for education (oil) has been undergoing debates regarding its privatization, which would significantly impact the "[...] reduction of resources for education and health, contributing greatly to the continuity of the precarious processes inherent to the two areas in question [...]" (Lucena, Lucena, & Previtali, 2016, p. 96), in addition to making it unfeasible to implement Goal 20 of the PNE, which is already shaken due to the implementation of EC no. 95/2016.

According to the PNE itself, the fulfillment of its goals should be monitored through periodic evaluations developed by the MEC, the *Comissão de Educação da Câmara dos Deputados* (Education Commission of the House of Representatives) and the *Comissão de Educação, Cultura e Esporte do Senado Federal* (Education, Culture and Sport Commission of the Federal Senate), the *Fórum Nacional de Educação* (National Education Forum) and the *Conselho Nacional de Educação - CNE* - (National Education Council). In addition, every two years INEP is responsible for publishing studies to assess the progress made in meeting the goals established in the PNE (2014-2024) - the so-called Monitoring Reports of the PNE Goals -, as provided for in the fifth strategy of Goal 20. Such instances also have the function of disseminating the results of these assessments, as well as to "[...] analyze and propose public policies to ensure the implementation of strategies and the achievement of goals" (Brasil, 2014, p. 11).

Less than two years after the institution of the PNE, the EC nº 95/2016 was approved, which had a significant impact on the effectiveness of the goals presented by the Plan (Dutra & Brisollola, 2020).

## **EC nº 95/2016: fiscal austerity and restriction of the Federal Government's investments in social policies**

In Brazil, the year 2016 is marked by intense economic and political crises, which significantly affected various sectors of society, including education.

The country's economy experienced another year of recession, which, together with the political crisis that resulted in the impeachment of then-President Dilma Rousseff, had a direct impact on the drop in tax collection, increase in interest rates for financing, crisis in the states' accounts, drop in confidence of large businessmen and national and international investors, among others (Lourenço, 2016).

As a result of the impeachment, Vice President Michel Temer took over as interim President of the Republic on May 12, 2016, sustaining a discourse of improving the pace of the country's economy. On August 31 of this same year, with the definitive removal of Dilma Rousseff, Temer assumes the presidency. On June 15, 2016, still interim president, Temer sent to Congress the Proposal of Amendment to the Constitution that became known as the PEC of the Spending Ceiling. The Proposal of Constitutional Amendment was processed in the House of Representatives as PEC 241/2016 and in the Federal Senate as PEC 55/2016. The PEC was approved by the House of Representatives on October 25, 2016 and in the Federal Senate on December 13 of the same year. Two days later, on December 15, 2016, it was enacted and became effective as EC no. 95/2016 (Brasil, 2016a).

EC no. 95/2016 amends the act of the Transitional Constitutional Provisions to institute a new fiscal regime, which establishes a ceiling for the primary expenses of the three branches of government (Executive, Legislative and Judiciary) and some autonomous federal bodies such as, for example, the Union Public Prosecutor's Office and the Union Public Defender's Office.

According to the approved text:

For each fiscal year, individualized limits are established for primary expenses:

I - Of the Executive Branch;

II - of the Supreme Federal Court, the Superior Court of Justice, the National Council of Justice, the Labor Justice, the Federal Justice, the Union Military Justice, the Electoral Justice and the Federal District and Territories Justice, within the Judicial Power;

III - the Federal Senate, the House of Representatives and the Federal Audit Court, within the Legislative Branch;

IV - the Federal Public Prosecutor's Office and the National Council of the Public Prosecutor's Office; and

V - The Office of the Federal Public Defender.

§ Paragraph 1 Each of the limits referred to in the head of this article shall be equivalent

I - For the fiscal year 2017, the primary expenditure paid in the fiscal year 2016, including the rests to be paid and other operations that affect the primary result, corrected by 7.2% (seven integers and two tenths percent); and

II - For subsequent years, the value of the limit for the immediately preceding year, corrected by the variation of the Índice Nacional de Preços ao Consumidor Amplo (IPCA) - National Wide Consumer Price Index, published by the Brazilian Institute of Geography and Statistics, or another index that comes to replace it, for the period of twelve months ended in June of the previous year to which the budget law refers (Brasil, 2016a).

As determined by EC no. 95/2016, primary expenses are limited to the investment made in the previous year, adjusted based on the variation of the *Índice Nacional de Preços ao Consumidor* (IPCA) - National Consumer Price Index -, published by the Brazilian *Instituto Brasileiro de Geografia e Estatística* (IBGE) - Institute of Geography and Statistics -, or another index that will replace it (Brazil, 2016). Thus, the primary expenses of the Executive Branch, for example, which until then could follow the increase in revenue, as of EC no. 95/2016 cannot exceed the values of the year 2017, plus the adjustment for inflation, measured by the IPCA (Instituto Brasileiro de Geografia e Estatística [IBGE], 2020).

According to art. 212 of the FC of 1988, the Union should never apply less than 18% of its tax collection in education (Brasil, 1988). With EC no. 95/2016, as of fiscal year 2018, this percentage is subject to the limit imposed by the Constitutional Amendment. Thus, regardless of the growth in revenues, those linked to the financing of education will always be equivalent to the total revenues of the year 2017 plus the variation in inflation. As we will see below, this new way of calculating the minimum application of revenues for the financing of education will lead to a reduction in the investments allocated to MDE.

As of the tenth year of effectiveness of EC no. 95/2016, the method for correcting primary expenses may be altered by means of a complementary bill, as provided in art. 108 (Brasil, 2016a). However, according to the sole paragraph of the same article, only one change in the method of correction of the limits will be admitted per presidential term.

Paragraph 10 of art. 107 establishes that the verification of compliance with the limits must consider the "[...] paid primary expenses, including paid rests payable and other operations that affect the primary result in the fiscal year" (Brasil, 2016a).

Art. 109 of EC no. 95/2016 provides, in the case of noncompliance with the individualized limits for the Powers (Executive, Legislative and Judiciary) and other listed bodies, sanctions that must be applied "until the end of the fiscal year of return of expenses to the respective limits" (Brasil, 2016a). Such sanctions imply the impossibility of: granting advantages, increases or adjustments in the remuneration of Power members or other public and military employees; creating positions, changing career structures, hiring or contracting personnel, except for the replacement of leadership and management positions, holding public competitions. Except only for the replacements of vacancies established by law. Creation of aids and benefits in favor of members of the branches of government and public servants and military personnel, in addition to the adoption of measures that imply the adjustment of mandatory expenses that exceed the variation of inflation (Brasil, 2016a). In short, any activity that entails an increase in public spending on personnel is forbidden during the period stipulated by the Amendment in question, which acts contrary to the increased allocation of resources for education proposed by Goal 20 of the PNE (2014-2024).

EC no. 95/2016, which determined the setting of a ceiling to limit the primary expenditures of the Union, is considered by many scholars as stemming from a policy of austerity, marked by an attempt to adjust the



economy in order to reduce public spending and, consequently, the role of the State in its functions of inducing economic growth and promoting social welfare (Rossi, Oliveira, Arantes, & Dweck, 2019).

According to Rossi et al. (2019), some argue that, in times of crisis, restrictive fiscal policies (tax increases or, preferably, spending reductions) can have an expansionary effect, balancing public accounts and consequently increasing economic growth. It is worth noting that these hypotheses are defended by economists belonging to economic liberalism and underpin the political fundamentalism of the extreme right's economicist vision.

Amidst the scenario of economic and political crises experienced in Brazil in 2015, austerity proposals took center stage in national politics, propagated as necessary for a plan to adjust the Brazilian economy in a short period of time. The following year, the principles of austerity became the basis for most of the proposals presented by the public sector, as was the case of PEC 241, which, after its approval and enactment, became EC no. 95/2016 and ended up, contrary to the official arguments defended, generating the restriction of public resources and damages to the fulfillment of fundamental social rights.

According to Rossi et al. (2019), politicians who advocate austerity sustain the argument that the government should make a fiscal adjustment in the face of an increase in public debt and a concomitant economic slowdown. According to its proponents, this adjustment should occur preferably by cutting public spending rather than increasing taxes, which would have positive effects on economic growth, since it would be a demonstration to the world economy of the Brazilian State's responsibility with the payment of its debts, since revenues would be higher than the amount of charges, in addition to giving Brazil a character of reliability, attracting the attention of international economic agents. Also, according to the proponents of the adjustment, in view of the improvement in expectations, the economy would be stimulated and would undergo a recovery resulting from the increase in productive investments. Such investments in the national territory would increase the number of jobs, household consumption, and attract foreign capital.

According to Paraná (2018), for critics of fiscal adjustment, the government cannot cut spending in times of economic crisis, because by reducing investments in social policies and workers' compensation, a vicious circle is created, where workers receive less and, as a consequence, also reduce their spending intended to meet their basic needs. As a result, companies start to make less money, because the demand for their products decreases. To avoid a possible crisis, businessmen reduce their production and lay off employees, increasing the number of people without work and without money to consume. The high unemployment rate and the consequent lack of resources to meet basic needs increases the number of hungry people in the country, besides causing physical and mental health problems. Also, social inequality and violence tend to intensify, favored by extreme situations of hunger and vulnerability. Thus:

Far from solving the problem, therefore, the austerity policy - cuts in social security and welfare, labor rights, and the scope of public goods - only makes this situation deeper, keeping unemployment and debts high, wages (indirectly, by the pressure of unemployment on the bargaining capacity of those who are still employed) and consumption capacity low, and, with that, depressed economic activity [...] (Paraná, 2018, p. 3).

In this crisis scenario, according to critics of austerity policies, on one side there is a fraction of the private sector, with less investment capacity and, therefore, less job creation, and on the other, unemployed consumers with less purchasing power, generating a movement of amplification of the social and economic crisis for the great mass of the population, while the large national and foreign economic groups increase their profits.

Such a situation would result in a new period of recession and a new phase of this vicious circle arising from the austerity policy: the initial cut in public spending reduces growth in other sectors, deteriorating tax collection and significantly compromising the fiscal result, which leads to a new spending cut. In other words, austerity sustains a paradox marked by the increase in public debt, whose solution, according to Fattorelli (2012) should be the review of the tax model that concentrates resources in the federal sphere, as well as addressing the problem of public debt of municipalities that end up in the tax division with the smallest share and a large burden of social obligations. In a context of economic crisis, austerity policies end up "[...] producing an even worse result than the fiscal scenario they set out to improve" (Paraná, 2018, p. 3).

Also:

[...] can have countless consequences on the political regime of a State. Depending on its configuration, they can cause from the emptying of democracy with the impossibility of deciding collectively on the spending that a government can do, through the political demobilization of its citizens and up to the influence that is exercised in the formation of subjectivity (Tavares & Silva, 2020, p. 13).

Although austerity policies amplify the economic recession, there are those who benefit from them. Rentiers, especially, increase their earnings with interest from the debts not paid by those who have lost their income. Besides these, economic and political groups that seek to transform education, health and other social rights into merchandise are also favored, since the reduction in the supply and quality of public services increases the demand for private services, which increases the accumulation of capital and relieves the state of its responsibility in providing social policies (Carneiro & Ávila, 2009).

## **Impacts of EC no. 95/2016 on the allocation of federal government resources for expenses with maintenance and development of education**

The austerity policy in public budget management deepened by the EC No. 95, in addition to entailing macroeconomic and distributive consequences, also significantly influences investments in social policies, including health, social assistance and, especially, education.

According to the *Relatório do Primeiro Ciclo de Monitoramento* - Report of the First PNE Monitoring Cycle - (Biennium 2014-2016), the monitoring of Target 20 aims to follow up on the "[...] evolution of investments in education with a view to reaching at least 7% of GDP by 2019 (end of the fifth year of the PNE 2014-2024) and 10% by 2024 (end of the PNE's term)" (Brasil, 2016c, p. 439). According to the text of the PNE itself, public investment in education is understood, according to Target 20, as the sum of public spending used to fulfill the State's duty to education. Such investment is analyzed from two perspectives: direct public investment - which refers to the sum of all resources allocated by the Union, states, and municipalities to education, and total public investment in education - which covers the first and, also, the "[...] complementation to the future retirement of education professionals, the resources allocated to scholarships and to the Fundo de Financiamento Estudantil (FIES) - Student Financing Fund -, and transfers to the private sector" (Brasil, 2016c, p. 439). This second investment perspective is present in indicator 20, responsible for monitoring Target 20, which analyzes the ratio between total public investment in education and PIB (Brasil, 2016c).

This same report shows an increase in total public investment in education from 2004 to 2014, registering an evolution of 1.5% which, in monetary values, represents a real growth of R\$343.8 billion in 2014, equivalent to 130.4% compared to 2004.

Considering the percentages of total public investment over PIB, the highest percentage of investments occurred in basic education, whose value represents 4.9% of the national PIB (Brasil, 2016c).

The report referring to the 2nd Monitoring Cycle of the PNE Goals was published in 2018, being, therefore, the first to present the results obtained after the implementation of the budget ceiling stipulated by EC no. 95/2016.

Unlike the first report, this one presents one more analysis indicator:

As §4º of art. 5 of the PNE mentions public investment 'in education' and not 'in public education', it was necessary to build two indicators to monitor spending on education in the country that would differentiate all public spending on education from spending on public education - one adapted to monitor Goal 20 of the PNE, public spending on public education (Indicator 20A: Public spending on public education in proportion to PIB); and another to monitor public spending on education more broadly, including spending in the private sector, in a literal interpretation of art. 214 of the constitutional text (Indicator 20B: Public spending on education in proportion to PIB), according to the internal technical report conducted by the Directorate of Educational Studies (Dired) of Inep (Brasil, 2019a, p. 326, author's emphasis).

According to the aforementioned report, indicator 20A - which deals exclusively with investments in public education - found a binding percentage of 5% of PIB in 2015. In general, public spending on education, in this same year, represented a value of R\$ 329.719 billion, of which 91.2% was destined for public institutions and 8.6% for private institutions, whose expenses involved subsidies, such as FIES; scholarships, portion of the Union's supplement to Fundeb to institutions in partnership, among others. Still about such expenditures, the report reveals that 48.9% of investments in education were destined to primary education; 19.8% to higher education; 13.8% to secondary education; 12.5% to early childhood education and only 4.9%, to professional education (Brasil, 2019a).

In 2020, the report alluding to the 3rd Cycle was made available, whose period of analysis of the Target 20 considers the evolution of Indicators 20A and 20B between the years 2015 and 2018, with the results of the latter year being of a preliminary nature. The report indicated a drop in spending related to Indicator 20A (public spending on public education), from 5.1% in 2015/16 to 5% in 2017 and in the preliminary result for

2018, justified by a stagnation of the PIB that occurred between 2015 and 2017. As for Indicator 20B (public spending on education as a proportion of PIB), there was a small variation: in 2015, the percentage was 5.5%; in 2016, 5.6%. In 2017 and 2018 they showed a retraction to 5.4% (Brasil, 2020b).

According to the main conclusions of the report,

Considering that the goal set by the PNE is to expand public investment in public education, reaching 7% of PIB by 2019 and 10% of PIB by 2024, the results of the report of the 3rd cycle of monitoring the goals of the national education plan observed relative stagnation of spending around 5% and 5.5% of PIB, with an indication of a small drop, indicate a great challenge for the achievement of intermediate and final goals (Brasil, 2020b, p. 416).

The mentioned stagnation of investments in education is a direct consequence of the budget ceiling stipulated by EC no. 95/2016 and impacts negatively on the guarantee of supply and quality of Brazilian education in all its levels and modalities, which in the coming years will have an increasingly smaller amount of resources to meet the growing demand of educational needs.

It should be noted that the limit imposed by EC no. 95/2016 on the Union's primary expenses indirectly affects states and municipalities. However, in the Explanatory Memorandum of the Ministry of Finance, attached to the Proposal for Constitutional Amendment forwarded to the National Congress, the then federal government already indicated the willingness to eliminate the constitutional binding of revenues for the financing of health and education, justifying that "[...] this type of binding creates fiscal problems and is a source of inefficiency in the application of public resources" (Brasil, 2016b, p. 4).

The current minister of economy, Paulo Guedes, has also publicly expressed his willingness to exclude any constitutional binding for the financing of health and education. For Sant'Ana (2019), the economy minister of the Bolsonaro government intends to approve the so-called '*PEC do Pacto Federativo*' ('PEC of the Federative Pact'), whose goal is to end tied revenues (which have a determined destination) and mandatory expenditures (the obligations to pay a certain expense or allocate a certain sum to a specific area, such as health and education. Still, according to Sant'Ana (2019), for Guedes it would be up to Congress, governors, and mayors to define how to allocate revenues and pay expenses, without the need to apply a minimum percentage in certain areas such as education and health. The minister intended the '*PEC of the Federative Pact*' to start being processed as soon as possible. However, he ended up backing off and did not send the Constitutional Amendment proposal, so as not to hinder the approval of the pension reform that ended up being approved in October 2019.

In November 2019, soon after the approval of the pension reform, the Government Leader in the Senate, Senator Fernando Bezerra Coelho (MDB/PE) and another group of 31 senators presented the '*PEC do Pacto Federativo*' (PEC no. 188/2019). This Proposal for Constitutional Amendment, among other determinations:

It establishes fiscal adjustment measures applicable to the costing of the public machine; modifies the federal budget structure; extends the prohibition of linking tax revenues to any kind of public revenue, except in the cases it establishes; allows the temporary reduction of the working hours of public servants as a measure to reduce personnel expenses; proposes fiscal adjustment and stabilization mechanisms when credit operations exceed capital expenditures, current expenses exceed ninety-five percent of current revenues or the realization of revenues and expenses may not allow meeting the entity's fiscal targets; and creates the Republic's Fiscal Council (Brasil, 2019b).<sup>2</sup>

PEC no. 188/2019 is currently (May/2022) in progress in the *Comissão de Constituição e Justiça e Cidadania* (Constitution and Justice and Citizenship Committee) of the Federal Senate. According to Lima (2021), this initiative represents a broad revision of constitutional provisions, with multiple impacts for the public administration, in budgetary and fiscal management aspects, as well as in the financing of public health and education policies. Such PEC, if approved, could compromise the financing of social policies, especially public education and health, generating distortions, reduction of public investments and the destruction and the consequent process of progressive withdrawal of social rights (Lima, 2021).

According to art. 212 of the Federal Constitution, in force before the implementation of EC no. 95/2016, the Union should annually apply at least 18% of tax revenues, including those from transfers, in MDE. According to this system, if, for example, from one year to the next the tax revenue showed a 10% growth, the minimum resources to be allocated to the financing of expenses with MDE would automatically be increased by 10%, regardless of inflation in the year.

<sup>2</sup> According to the text of PEC No. 188/2019, the Republic's Fiscal Council will be composed of 11 councilors: the President of the Republic; the President of the House of Representatives; the President of the Federal Senate; the President of the Federal Supreme Court; the President of the Federal Audit Court; three Governors and three Mayors.

As a result of EC no. 95/2016, as of fiscal year 2018 a new system was adopted to calculate the minimum tax revenue to be allocated to MDE. This system no longer considers the 18% of tax revenue calculated each year as the calculation basis for determining the minimum to be applied. According to art. 110 of the Transitory Constitutional Provisions Act, with new wording given by EC no. 95/2016, the minimum applications in MDE will be equivalent, in the fiscal year of 2018 and in the following ones, to the 18% of tax revenue calculated in the fiscal year of 2017 plus only the annual inflation, measured by the IPCA (Instituto Brasileiro de Geografia e Estatística [IBGE], 2020).

The new way of calculating the minimum application of revenues for the financing of education, prescribed by EC no. 95/2016, implied a reduction in the revenue earmarked for the financing of education. If we take as reference the tax revenue earmarked for spending on MDE in the period from 2016 to 2019, before the health crisis, we see that such revenue showed a growth of 24.50%: it evolved, in current values, from R\$ 258.793 billion in 2016 to R\$ 322.199 billion in 2019. During this period, the IPCA was 18.41%. Such an example shows that, generally, tax revenue presents an annual growth higher than inflation. Thus, the new system for calculating the minimum resources to be allocated to education adopted by EC no. 95/2016 will result in the restriction of the funding base for MDE expenses.

In practice, EC n° 95/2016 froze, in real terms, the revenue destined to the financing of expenses with MDE in the year 2017, considering that before the approval of EC n° 95/2016 the growth of the minimum to be destined to the financing of education was linked to the growth of tax revenues and not to inflation. The Statements of Revenue and Expenditure with MDE, published by the National Treasury Secretariat, linked to the Ministry of Economy (Brasil, 2020c), reveal that the new way of calculating the financing of expenses with maintenance and development of education, determined by EC no. 95/2016 as of 2018, resulted in a drastic reduction of resources allocated to education in only two years of EC no. 95/2016's effectiveness, as presented in Table 1.

**Table 1.** Difference between the minimum tax revenue to be allocated to the Union's Expenditure on MDE according to the old rule (18% of Tax Revenue calculated each year) and according to the new rule recommended by EC no. 95/2016 as of fiscal year 2018 (Tax Revenue collected in 2017 plus the IPCA in the following years).

Year	Union tax revenue earmarked for financing	Union tax revenue earmarked for funding MDE	
	MDE expenditures	expenses	
	Old rule [A] 18% annual tax revenue	New rule: EC no. 95/2016 [B] 18% 2017 tax revenue plus annual inflation variation (IPCA)	Difference (R\$) [A]-[B]
2018	331.830.947.086	310.866.919.121	- 20.964.027.965
2019	344.501.469.645	312.836.939.177	- 31.664.530.468
2020	315.467.748.165	313.317.220.623	- 2.150.527.542
Δ 2013-2020	-11,92%	-12,59%	

Note: Values (R\$ 1.00) at January 2021 prices (IPCA). Source: Brasil (2020c).

In 2018, tax revenue totaled R\$ 1.844 trillion and the minimum to be allocated to the financing of expenses with MDE would be R\$ 331.831 billion, according to the rule in force before EC no. 95/2016 (18% of tax revenue collected in 2018). However, due to the Constitutional Amendment, the minimum tax revenue allocated to the financing of education totaled R\$ 310.867 billion, R\$ 20.964 billion less than the old rule, adopted before the effectiveness of EC no. 95/2016 (Table 1). In 3 years of effectiveness of the Constitutional Amendment (2018-2020), education lost R\$ 54.779 billion of the minimum revenue on which should be allocated at least 18% for the financing of expenditures on MDE.

In Table 2 and 3 are included the percentage of tax revenue allocated to expenses with MDE, according to the rules in force before and after EC No. 95/2016.

The values presented in Table 2 reveal that in the period from 2013 to 2016 the percentage of tax revenue allocated to MDE expenditure showed an upward trajectory: from 22.54% to 25.77%. However, from 2017 to 2019, before the outbreak of the pandemic, the percentage of tax revenue for the financing of education declined from 25.77% in 2016 to 19.56% in 2019, according to the rule in force before EC no. 95/2016. If we consider the calculation system that was adopted before the effectiveness of EC no. 95/2016, in the year 2020 there was a small percentage increase in expenses with MDE: from 19.56% in 2019 to 22.97% in 2020.

Until 2018, in the Statement of Revenues and Expenditures with MDE, published by the National Treasury Secretariat (Ministry of Finance), the following procedure was adopted to calculate the percentage of tax revenue allocated to expenditures with MDE: the total expenditures with typical MDE actions was divided by the total net tax revenue (18% of the total tax revenue linked to the financing of education). In 2017, for example,

the expenses with typical MDE actions totaled R\$ 72.663 billion and the net tax revenue totaled R\$ 312.874 billion. In that year, the Union allocated 23.22% of total tax revenue to the financing of expenditures on MDE.

**Table 2.** Union Expenditures with MDE as a percentage of Tax Revenue in the period from 2013 to 2020, according to the rule in place before the implementation of EC no. 95/2016.

Year	Union tax revenue earmarked for financing MDE expenditures: Old rule [A]	Expenses with MDE [B]	% of tax revenue allocated to MDE expenditure [D] Old rule [B]/[A]
2013	358.460.573.504	80.802.246.526	22,54
2014	346.222.718.274	80.109.533.933	23,14
2015	334.430.935.080	76.781.297.810	22,96
2016	307.808.963.694	79.325.318.205	25,77
2017	312.874.078.187	72.663.455.568	23,22
2018	331.830.947.086	71.460.688.216	21,54
2019	344.501.469.645	67.385.914.079	19,56
2020	315.467.748.165	72.452.303.252	22,97

Note: Values (R\$ 1.00) at January 2021 prices (IPCA). Source: Brasil (2020c).

As of 2018, due to the effectiveness of EC No. 95/2016, the criterion for verifying compliance with the minimum value of tax revenue for financing the expenses with MDE was changed. The tax revenue earmarked for MDE expenses is no longer the 18% of the total tax revenue collected in 2018. The minimum tax revenue for the year 2018 became the net tax revenue collected in 2017 plus the inflation variation (IPCA) during the year 2017. According to this new form of calculation, in 2018, the expenses with typical MDE actions should be greater than 100% of the minimum 18% of the tax revenue collected in the previous year (2017), corrected by the IPCA, as shown in Table 3.

**Table 3.** Union expenditures with MDE as a percentage of Tax Revenue in the period from 2018 to 2020, according to the rule in force after the implementation of EC no. 95/2016.

Year	Union tax revenue earmarked for funding MDE expenses New Rule EC no. 95/2016 [A]	18% of the net tax revenue of the previous year corrected by the IPCA New rule EC no. 95/2016 [B] = 18% OF [A]	Expenditure with MDE [C]	Applied % expenditures with MDE: New Rule EC no. 95/2016 [C]/[B]
2018	310.866.919.121	55.956.045.442	71.460.688.216	127,71%
2019	312.836.939.177	56.310.649.052	67.385.914.079	119,67%
2020	313.317.220.623	56.397.099.712	72.452.303.252	128,47%

Note: Values (R\$ 1.00) at January 2021 prices (IPCA). Source: Authors' elaboration (Brasil, 2020c).

According to the new rule, prescribed by EC no. 95/2016, in the year 2018 the calculation on the minimum to be allocated to MDE expenses was performed as follows: the minimum tax revenue (18% of the total bound tax revenue) collected in the year 2017 plus inflation calculated in 2017 (IPCA). This calculation resulted in a minimum revenue totaling R\$ 55.956 billion. This minimum revenue was divided by the total expenses with typical education actions executed in 2018. According to this new calculation formula, the Federal Government allocated 127.71% of the minimum net tax revenue to finance the expenses with MDE. Thus, as determined by EC no. 95/2016, the Union has met the minimum limit to be invested in education, i.e., at least 100% of the net tax revenue, linked to the financing of education, collected in the year 2017, plus the IPCA variation. In 2019, the Union allocated 119.67% in relation to the minimum limit to be invested in education.

The year 2020 was an atypical year. Due to the Pandemic, the economic crisis deepened, leading to a reduction in tax collection. In 2020, if compared to 2019, there was a drop of 8.43% in tax revenues that, according to the rule in force before EC no. 95/2016, should be allocated to the financing of education: from R\$ 344.501 billion in 2019 to R\$ 315.468 billion in 2020, as shown in Table 2 previously shown. As for the expenditure on MDE, there was an increase of 7.52%: from R\$ 67.386 billion to R\$ 74.452 billion.

However, after the pandemic, if tax revenue resumes a growth trajectory, the system of financing expenditures with MDE prescribed by EC no. 95/2016 will result in a significant reduction of resources for the financing of education, as observed in the three years of EC no. 95/2016, especially in 2018 and 2019, before the outbreak of the pandemic.

If we consider the period from 2016 to 2019, expenditures with MDE were reduced by 15.05%: from R\$79.325 billion in 2016 to R\$67.386 billion in 2019 (Table 2). If we take as reference the percentages of tax revenue allocated to MDE expenditures, according to the rule in force before EC no. 95/2016, there was a reduction from 25.77% in 2016 to 19.56% in 2019. Such figures prove our hypothesis that EC no. 95/2016 has resulted in a restriction of public resources allocated to MDE and will make it impossible to meet Target 20 of the PNE (2014-2024).

## Final considerations

EC no. 95/2016 deepens the austerity policy that had already been adopted by the federal government for some time. The imposition, for 20 years, of a limit on the non-financial expenses of the Executive Branch, aims to ensure the payment of expenses with public debt and will result in a drastic reduction in the resources allocated to the financing of public policies, as Amaral (2017) has already shown:

The movement of budgetary resources toward capital, to the detriment of the social, became strongly explicit in the very wording of PECs 241 and 55, which became EC 95, by not stipulating any limit to the payment of interest, charges and amortization of the debt, which materialized later in the 2017 LOA by substantially raising, 60.2%, the possible value for this expense in relation to that executed in 2016 (Amaral, 2017, p. 24).

From 2016 to 2019, the resources allocated by the Union for the payment only of interest, charges and amortization of the debt showed a growth of 5.85%: evolved from 566.464 billion in 2016 to R\$ 599.615 billion in 2019, in values updated by the IPCA of January 2021. This growth was significant considering that, in the same period, the Union's expenditures with MDE showed a decrease of 15.05%: from 79.325 billion in 2016 to R\$ 67.385 billion in 2019. In the period from 2016 to 2019, before the outbreak of the pandemic, the Union has cumulatively allocated R\$ 2.446 trillion for the payment of interest, charges and amortization of public debt, 8.4 times more than the resources allocated to MDE (R\$ 290.835 billion).

In general, the deepening of the austerity policy as the only and most viable alternative presented by the federal government to overcome the fiscal and economic crisis experienced in Brazil meets, especially, the interests of the financial market.

As mentioned throughout the text, all this rigor and lack of flexibility reveal the paradox of EC no. 95/2016: a country in crisis should encourage investments in various areas - especially in social policies - to enable the recovery of the economy, job creation and expansion of consumption, necessary to overcome the crisis. However, the Amendment acts in the opposite direction, freezing expenditures and reducing funding for social policies. The Amendment also makes the PNE unfeasible, since the establishment of a limit for the allocation of resources in this area goes against the proposal, contained in Target 20, to expand investments in education in the country and will already enable the tragedy that will be the hallmark of EC no. 95/2016 on social policies, particularly for education, as Amaral states:

The analysis of the budget execution of the Executive Branch in the period 1995-2016 and the budget approved in the 2017 LOA allows us to state that meeting the goals contained in the PNE (2014-2024) in the context of the EC 95, which will last until the year 2036, also encompassing the next ten-year PNE, is an almost impossible task, and it can be said that the EC 95 determined the 'death' of the PNE (2014-2024) (Amaral, 2017, p. 28, grifo do autor).

As a consequence of the implementation of the amendment, essential services to the population, such as education and health, are drastically affected by the reduction of resources provided by the federal government, compromising the quality and even the guarantee of their supply, weakening the entire network of social protection and constituting a setback in terms of rights formally provided in Article 6 of the acclaimed Citizen Constitution of 1988. Moreover, this austerity policy, by restricting the resources intended for the financing of social policies, deepens the serious social crisis with an increase in unemployment and an increase in the number of poor and miserable people in Brazil. Because of EC no. 95/2016, in the years 2018 and 2019, health will lose R\$ 18.935 billion, equivalent to 7.27% of the resources allocated by the Union in these two years.

As seen earlier, in the period from 2016 to 2019, expenditures with MDE were reduced by 15.05%: from R\$ 79.325 billion in 2016 to R\$ 67.386 billion in 2019. When examining these expenditures and taking as reference the percentages of tax revenue allocated to MDE expenditures, according to the rule in force before EC no. 95/2016, there was a reduction from 25.77% in 2016 to 19.56% in 2019. Given the above, in section 5 of this article, we conclude that Target 20 of the PNE cannot be implemented. After all, there is no way to

increase the allocation of resources for education in the face of a constitutional determination to limit the growth of the Union's primary expenditure for 20 years. Regrettably, between the possibility of making some actions feasible (PNE) and setbacks (EC nº 95/2016), education as a right for all is unfeasible in Brazil in the coming years, deepening the chronic process of neglect in relation to social rights and the scientific, cultural, and educational improvement of the Brazilian population.

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The author Michele Aparecida Martins was responsible for the conception of the article, writing the manuscript, critical review of the content and approval of the final version to be published. The author Roberto Antonio Deitos was responsible for the conception, design, writing of the manuscript and revision of the final version to be published. The author Luiz Fernando Reis was responsible for the analysis and interpretation of data related to income and expenses with maintenance and development of education (MDE) writing and review of the manuscript, as well as for the final approval of the version to be published.