



THE LOBBY OF THE NATIONAL CONFEDERATION OF INDUSTRY IN THE HOUSE OF REPRESENTATIVES: NEW RULES FOR ENVIRONMENTAL LICENSING

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Abstract: The Bill entitled "General Law on Environmental Licensing" (PL 3729/2004) authored by the Representative Luciano Zica (PT) is being processed in the Brazilian House of Representatives and raises controversies among groups in favor of and against the flexibilization of environmental rules. For considering the National Confederation of Industry (CNI) a group responsible for pressure activities, our objective was to identify the strategies used by the CNI to influence the formulation of the PL. We use documentary analysis as methodology, through data collection on the online website of the House of Representatives, as well as documents produced by the CNI. The results point to the success of the business lobby, because the group was able to intervene in decision-making arenas, aggregate allied representatives to defend their interests and incorporate their preferences in the entire content of the PL, the substitute approved by the Finance and Taxation Committee (CFT).

Keywords: Environmental Licensing; Lobby; Legislative Branch.

1 Introduction

Worldwide, the last 40 years of the 20th century were marked by environmental tragedies¹, conflicts and debates about the limits of nature and, consequently, the limits of life on earth. The theme "environment" began to be discussed in international conferences and at the center of the debate was the development model based on large-scale industrial production and its consequences - such as air and sea pollution - which triggered a polarization between developmentists and ecologists. This polarization was partially resolved with the formalization

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¹ Among the facts that motivated the world debate about the limits of nature in the face of human intervention, the following stand out: the contamination of Minamata bay in Japan (1956), caused by mercury from a chemical industry, which reached the food chain and contaminated about 17,000 residents and neighboring areas; in 1962, the publication of Rachel Carson's book "Silent Spring" showed that the indiscriminate use of dichlorodiphenylchloroethane (DDT) could cause population reduction of several birds and imbalance in ecosystems (DIAS, 2011).

of a new vision, published in the Brundtland Report², in 1987, which brought as a consensus proposal the concept of sustainable development.

In Brazil, the main environmental discourse in force, after the 1970s, is directed to the advancement of policies in the perspective of sustainable development, which presupposes a new form of relationship between man and nature. Representatives of the Brazilian government attended the Stockholm Conference in 1972, the first Meeting of the United Nations that had as its central debate the environmental issues, when the idea of inexhaustibility of natural resources was abandoned.

Between the Stockholm Conference in 1972, ECO-92 and the Rio+20, in 2012 (held in Brazil) and the 21st Conference of the Parties (COP 21, in Paris), in 2015, there is a scenario of conflicts and international debates around the construction of an agenda of commitments to the environment. It can be seen that countries that are signatories to international agreements or treaties on the environment³, like Brazil, began to invest in the creation of rules to regulate the use of natural resources, as well as to reduce the use of toxic products and the emission of pollutants. This is a scenario of intense conflict of interest between government representatives; business sectors; environmental and social movements. The equation to be solved implies seeking balance, in a market economy context, between economic production, environmental sustainability and social equity.

Despite Brazil participating in all conferences and being a signatory to the International Treaties on the environment, in this same context, Brazilian governments were concerned with achieving economic growth objectives, integrating the national market into the global market, balancing the balance of payment, which means the unbridled use of natural resources, increased pressure on the environment and, consequently, imbalances in ecosystems, without promoting justice and social equity⁴.

² Document entitled Brundtland Report or Our Common Future, published in 1987. In this document, "sustainable development" is conceived as: development that meets the present needs, without compromising the ability of future generations to meet their own needs. This report is part of UN initiatives that reaffirm a critical view of the development model adopted by industrialized countries and reproduced by developing nations, and which highlight the risks of overuse of natural resources without considering the ability to support ecosystems; points to the incompatibility between sustainable development and current production and consumption patterns (Brundtland Report "Our Common Future": definition and principles. Available at: <http://www.mudancasclimaticas.andi.org.br/node/91>).

³ Treaties on Climate Change (Kyoto Protocol and, subsequently, the Paris Agreement); Declaration about the Forests; Convention about the Biological Diversity; Basel Convention about the Control of Cross-Border Movements of Hazardous Waste and its Deposit.

⁴ It is data that evidenced by this dynamic: in 2017, Brazil was among the 10 largest economies in the world, with a GDP of around 2.14 trillion reais; led the ranking of countries with the highest concentration of income in the world between 2001 and 2015; in 2018, 1% of citizens hold 27.8% of all the money in the country (World Inequality Survey, 2018); in 2018, Brazil ranks 79th in the world ranking of the Human Development Index (HDI) (PNUD, 2018); in environmental terms, problems related to soil erosion and silting of watercourses due to deforestation and inadequate soil management in agriculture and livestock; pollution of water and soil due to lack of basic sanitation and use of pollutants in urban and rural areas; inefficiency of solid waste management policy in urban and rural areas; air pollution by fixed sources (industry) and mobile (automotive vehicles); destruction of ecosystems resulting from

The pressure of international organizations, the internal context of environmental crises and the emergence of organized environmental movements contributed to modify the correlation of forces in the Brazilian legislative context, and the environmental issue became on the government agenda. It should be highlighted that, although Brazil stands out internationally for having a well-established environmental legislation, several environmental rules have undergone changes in recent decades, especially to meet political pressures due to less rigidity of environmental legislation (TAGLIALEGNA, 2006; CABRAL, 2007; GARCIA, 2012).

They are "necessary changes, because environmental protection plasters the economy", as representatives of Brazilian entrepreneurs argue, such as members of the National Confederation of Industry (Portuguese acronym: CNI) and the National Confederation of Agriculture (Portuguese acronym: CNA, for whom the adequacy to environmental standards can mean an increase in the cost of enterprises, which implies a decrease in competitiveness in the international market. It is this logic that drives them to political pressure in decision-making arenas, as a strategy to minimize the impact of the environmental issue on productive investments (CABRAL, 2007). In addition to the special chapter in the 1988 Federal Constitution (IV) for the environment, in the last 30 years important regulatory frameworks have been produced, at the initiative of the federal executive and the legislature. As an example, we have Law 6,938 of August 31, 1981, which establishes the National Environment Policy (Portuguese acronym: PNMA) and Law 9,985/2000, which establishes the National System of Conservation Units (Portuguese acronym: SNUC).

An important theme of the environmental agenda that still lacks attention on the part of legislators is the Environmental Licensing (EL) process. Art. 225 of the 1988 Federal Constitution was an important advance to support more consistent regulatory frameworks for the process. It is explicit in the following paragraph and item that the constitutional text speaks of: "§ 1º To ensure the effectiveness of this right, it is up to the public authorities: IV – to require, in the form of law, for installation of work or activity potentially causing significant degradation of the environment, previous study of environmental impact, which will be given publicity". With the above devices:

The Constituent Legislature assured the Environmental Impact Study (EIS) of the constitutional cradle and, consequently, the environmental licensing. The above-transcribed device is guided by two basic principles, the principle of significance and the principle of advertising. For an enterprise to impose the preparation of EIS, the potential impact associated with it must be significant, by express provision of the Constitution. If it is not, it is emphasized, environmental licensing will occur, but the EIS will not be required. In addition, advertising is an essential element of the EIS. Failure to comply with this directive creates the invalidity of the environmental permit, which may be granted (ARAÚJO, 2002, p. 7).

dam construction; pollution of water resources due to the disruption of chemical tailings containment basins of the mineral industry.

Despite the importance of EL in the Brazilian regulatory framework and its adoption in other countries such as the United States, the pioneer, and China, the work of Piagentini and Favareto (2014) point to the need to improve this instrument with international experiences as an example. The hypothesis confirmed by the authors is that:

The licensing ritual is purely authoritative and presents serious limits as an instrument of public debate on the environmental impacts and the costs involved in the option to carry out the projects in question (PIAGENTINI; FAVARETO, 2014, p. 33).

Two conclusions pointed out by the authors are of interest to the argument developed here: a) The legitimacy of the EIS is impaired, as the study is responsibility and carried out by stakeholders and; b) The channels of public participation are insufficient, and do not agree with the complexity of the issues surrounding an EL process.

The complicators generated by the aforementioned deficiencies can be seen in the EL process of the Belo Monte Plant, located in Altamira, Pará state. The project, dating from 1980, was embargoed several times, due to its complexity, with many actors involved and the need for broad debate, especially with the impacted communities. Already in 2009, after the delivery of the EIS to the Brazilian Institute of the Environment and Renewable Natural Resources (Portuguese acronym: IBAMA), the National Indian Foundation (Portuguese acronym: FUNAI) questioned the disregard of the interests and positions of indigenous peoples. Thus, new public hearings were scheduled, but the problems persisted, as Fainguelernt (2016, p. 255) points out:

In addition, according to the Federal Public Ministry (2009/2010), the hearings held presented driving problems and how to ensure the participation and rights of the population affected by the enterprise. Researchers from different universities in the country engaged in the process and elaborated the "Panel of Experts", which conducted a critical analysis of the EIS in Belo Monte. This document questioned, through several dimensions of impact the viability of the enterprise. (FAINGUELERNT, 2016, p. 255).

The CNI is an example of lobbying that has acted in the process of the National Constituent Assembly (Portuguese acronym: ANC) and continues to influence decision-making processes on the subject of the environment. It incorporated sustainable development into its political agenda and began to provide consulting services to its affiliates, in addition to holding meetings to guide them on the path of sustainable development, such as the "Meeting of Industry for Sustainability", with first edition held in 2012, concomitant with the realization of Rio+20.

However, it is observed from the analysis of technical materials, such as the Legislative Agenda of the Industry (Portuguese acronym: ALIN)⁵, that the CNI's discourse is not consistent with the recommendations made to legislators during the production of environmental rules. In the 2019, the ALIN, the proposal that appears as a priority on the subject is the PL 3729/2004, which seeks to establish general standards for the EL process. This bill, being processed in the House of Representatives along with 23 bills, deals with a regulatory public policy, which in essence arouses many conflicts, as it involves several groups with antagonistic interests linked to business, in general, agribusiness and environmental movements.

Our objective in this work is to analyze how the CNI, through the defense of its interests (lobbying practice), influenced the processing of this project within the parliamentary committees, which constitute during the legislative process as important decision-making arenas for pressure groups (RICCI; LEMOS, 2004), as they argue:

By constituting smaller groups than the plenary, the committees favor the participation of organized groups, facilitate the work of collecting and distributing information, reduce decision-making costs, make room for more active participation of minorities, provide a negotiation and consensus environment and allow representatives to achieve their objectives – whether they are the achievement of a particular public policy, the vocalization of interest groups, whether their own re-election (RICCI; LEMOS, 2004, p. 1).

According to Fonseca *et al* (2017) it is necessary to advance scientific research that collaborates and produces information on the theme "environmental licensing", with a view to ensuring improvement to this public policy instrument and its consolidation. The present study seeks to fit into this agenda and answer the following question: What is the influence of the CNI in the processing of the PL 3729/2004? To answer the question, the methodological path was the documentary analysis developed based on secondary data available on the Website of the House of Representatives and on the survey of the bibliography, which relates the performance of pressure groups and decision-making processes of public policies (LABRA, 1999; ROCHA, 2005; ZAMPIERI, 2013).

The following materials were analyzed: entire content of the PL 3729/2004, tachygraph notes, committee and working group documents. Our specific objectives are: a) Identify relevant political actors; b) Identify the strategies used by the industry lobby and c) Identify the relationship between the position of the pressure group and the result of the proposal.

⁵ The CNI Legislative Affairs Council is a formal expression of the lobbying undertaken, which through this structure monitors the proposals, makes recommendations and formulates the Legislative Agenda of the Industry (ALIN). In the Legislative Agendas, published since 1996, the industry's positions on the topics it has interest in are expressed; consists in monitoring the proposals being processed in the National Congress, the analysis and adequacy of the proposals to what represents the will of the industry. Mates are classified as: Convergent, when the proposal is adequate; convergent with caveats, when it needs adjustments; Divergent with caveats, when it is not appropriate, but can be modified and Divergent, when it does not represent the interests of the sector. When the bills are classified "with reservations", the CNI exposes its point of view and argues with recommendations to representatives, so that changes are made and meet the wishes of the sector (CABRAL, 2007).

2 The Environmental Licensing Instrument

Environmental Licensing (EL) is an administrative instrument granted by the Public Authority to individuals or legal entities, which provides prior authorization for the performance of activities, facilities of undertakings, modifier and potentially polluting operations or offensive to the environment. Licensing is a process with phases, which provide for the study of the impact caused by the intended action and its consequences⁶. It is a conflicting issue, because it imposes a series of rules for the use of the environment and assigns responsibility to the causes of environmental degradation.

The legislation about the EL is the subject of contradictory views. On the one hand are interest groups that seek flexibility and simplification of rules and procedures – a view vocalized by groups linked to industrial activities and agribusiness; on the other hand, those who cherish the importance of maintaining all the procedures provided and a strong regulation on potentially degrading activities – a group represented mainly by scientists, biologists, environmentalists and social movements linked to the preservation of the environment. This dispute is evident in the arguments of Zhouri, Laschefski and Paiva (2005) in the study on the EL process for the construction of the small hydroelectric plant in Aiuruoca, located in the South of Minas Gerais:

The process of environmental licensing of hydroelectric plants, therefore, does not occur in an institutional environment marked by the interaction between actors who, through negotiations, decide consensually about the appropriation and use of the environment. It is, as we have discussed, an institutional locus in which clashes between social segments that represent different projects of society are fought. Thus, laws and norms are often reinterpreted or 'adequate' so as not to preclude particular economic projects that are generally advertised as in the public interest. In other words, legislation has been reinterpreted on a case-by-case high, especially when understood as an obstacle or when it is contrary to the developmental model and the voracious interests of the market (ZHOURI, LASCHEFSKI; PAIVA, 2005, p. 99).

The theme environmental licensing was introduced in the Brazilian legislative framework with the approval of Law 6,938 of August 31, 1981, which establishes the National Environment Policy (PNMA). This law establishes the EL process as an instrument of the PNMA, declaring it responsible for licensing and reviewing effective or potentially polluting activities (Art. 9, paragraph IV). In the following provisions, it lists the actions on the

⁶ The National Council for the Environment (Portuguese acronym: CONAMA) in its Resolution 237/97 defines environmental licensing, such as: "Art. 1º For the purpose of this Resolution are adopted the following definitions: I - Environmental Licensing: administrative procedure by which the competent environmental agency licenses the location, installation, expansion and operation of undertakings and activities using environmental resources, considered effective or potentially polluting or those that, in any form, may cause environmental degradation, considering the legal and regulatory provisions and technical standards applicable to the case." (Resolution 237/97. Available at: https://www.icmbio.gov.br/cecav/images/download/CONAMA%20237_191297.pdf. Access on: Nov 20, 2018).

environment that require prior licensing and establishes as responsible for this process the IBAMA and the National Council for the Environment (CONAMA):

Art. 10. The construction, installation, expansion and operation of establishments and activities that use environmental resources, effectively or potentially polluting or capable, in any form, of causing environmental degradation shall depend on prior environmental licensing. ("*Caput*" of the article with wording given by Complementary Law No. 140, of 12/8/2011);

Art. 11. IBAMA is responsible for proposing to the CONAMA standards and standards for implementation, monitoring and supervision of the licensing provided for in the previous article, in addition to those originating from the CONAMA itself. (Expression "SEMA" amended by Law No. 7,804 of 7/18/1989).

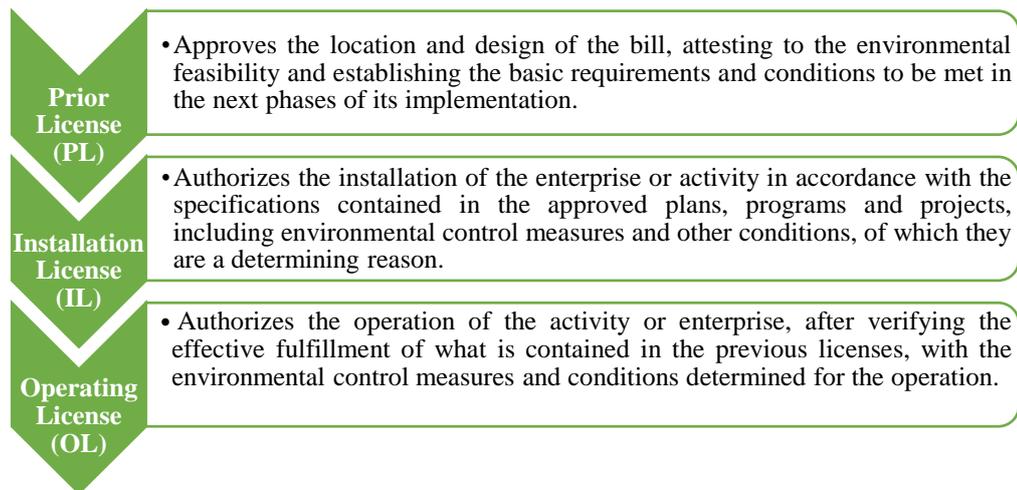
The PNMA has already undergone significant changes with the approval of new legislation, such as Complementary Law 140/2011⁷. In addition, other laws prior to the Constitution were carried out by the CONAMA, for which responsibility is assigned to regulate the environmental licensing process. According to the bibliography examined (ARAÚJO, 2002) there are 28 Resolutions of the CONAMA on the theme Environmental Licensing, most of which are focused on a specific context of resource use or implementation of a certain activity of power generation, ore extraction, dam construction etc.

The CONAMA Resolution 01/86, in its article 1, provides the definition of environmental impact; in Art. 2 attributes the need of the Environmental Impact Study and Environmental Impact Report (EIS/EIR) for the development of some activities, in addition to specifying the technical and informational content that must be contained in the required documents.

Resolution 237/97 maintains the granting of an environmental license subject to the EIS/EIR and defines steps of the procedure; gives IBAMA responsibility for the environmental license in the event of projects with significant potential for environmental impact; innovates by defining in three the license typologies that make up the EL and must be obtained by the applicant: Prior License (PL), Installation License (IL) and Operating License (OL), in addition to setting expiration dates for each license, as shown in Figure 1, the following.

⁷ Complementary Law 140, of December 8, 2011, provides rules based on paragraphs III, VI and VII of the *caput* of the sole paragraph of Article 23 of the Federal Constitution, which define cooperation between the Union, states, the Federal District and municipalities, with the aim of protecting, defending and conserving the environment, promoting democratic and efficient decentralized management, to ensure the overlapping of action; establishes that there may be additional or subsidiary action between the federative entities and defines separate administrative actions for the Union, States, Federal District and Municipalities. Available at: http://www.planalto.gov.br/ccivil_03/LEIS/LCP/Lcp140.htm. Access on: Dec 17, 2018.

Figure 1 – Description of Environmental License Types in Brazil



Source: Prepared by the author based on Art. 8 of the CONAMA Resolution 237/97.

The existence of three types of license, each with specific procedures, means for representatives of specific economic groups an excessive, costly bureaucracy that generates delay in the licensing process. No wonder, the bills for modification of the EL give special emphasis to the dismantling of these three processes, simplifying and sometimes disregarding the need for their realization for some types of enterprises. Political actors who act as direct representatives of these interests express this position, as is explicit in Senator Blairo Maggi's speech (PR/MT)⁸

With regard to merit, the proposal will give greater speed in the environmental licensing of strategic infrastructure projects and national interest. The time-consuming rite of environmental licensing, in three phases, slows Brazilian development and drives away new investments, national and international, in projects developed in the country.⁹

In several regions of the country, state laws guarantee simplified licensing processes for enterprises with low socio-environmental impact. A study by Oliveira *et al* (2016) highlights that States of the Southeast (Rio de Janeiro, Espírito Santo, São Paulo and Minas Gerais) have legal provisions that suppress the need to conduct studies, speed up and decrease the costs of the licensing process and generally determine only one or two phases (single or two phases) to ensure the authorization of the enterprise. However, the authors point out that "simplified licensing models can decrease the degree of caution of the decision-making process, increasing

⁸ Blairo Maggi is a member of the Party of the Republic (PR), representing Mato Grosso. Agronomist engineer, businessman, great landowner and politician; Minister of Agriculture of the Government Michel Temer (2016-2018), is part of the Parliamentary Front of Agriculture and positions itself in plenary with the Ruralist Bench. It is called by environmental movements as "King of Soybeans" and blamed by Greenpeace for the high levels of deforestation in the Amazon between 2003 and 2004. He is co-author of PEC 45/2013, which "Amends Article 231 of the Federal Constitution to prohibit the demarcation of indigenous lands in invaded areas."

⁹ Opinion of Senator Blairo Maggi, rapporteur of the Special Committee on National Development; 11/09/2015. Available at: <https://www25.senado.leg.br/web/atividade/materias/-/materia/123372>. Access on: Jan 08, 2019.

the risks of mistaken state decisions. After all, simplified models generate less information and studies" (p. 473).

3 Environmental Licensing from the perspective of the National Confederation of Industry (CNI)

As stated above, the CNI is a relevant political actor in decision-making arenas, using lobbying¹⁰ as a legal practice of representing their interests with decision-makers, especially within the House of Representatives. As we have already seen environmental preservation has already been considered an obstacle to the development and growth of the nation and, although this thought persists in some sectors of society, the current formal discourse is based on the idea of sustainable development, in an attempt to make production, consumption and the use of the environment compatible with the ideal of preservation, for this and for future generations. According to the CNI:

The development of any business depends, among other factors, on its compliance with the regulatory environment. Thus, the rules and incentives established by the State induce economic activities to the development pattern defined by it (NATIONAL CONFEDERATION OF INDUSTRY, 2017, p. 49).¹¹

In this sense, it is perceived that the business-industrial sector incorporates this discourse, investing in advertising and green marketing¹² and sometimes adapting to new rules and legislation stemming from the relationship of productive activities with the environment. However, this adequacy is not based on consensus and decision-making spaces are a locus of power disputes and distinct views. Legislative processes related to regulatory public policies reflect such disputes, and during the course of the matters are revealed the preferences conditioned by interests of certain groups, which act in accordance with formal and informal rules to make their interests present in the result of the legislative proposal. This was the hypothesis that guided the present study.

In this context, for the present work it was relevant to identify what is the view of the CNI on the theme, based on the documents that contain the recommendations made by the interest group so that the Environmental Licensing system is adapted to the productive sector.

¹⁰ The concept of lobby emerged in the United States and is used to designate all the work invested by a particular interest group to influence and represent their preferences in the public sphere, especially in the decision-making and public policy-making arenas. Lobbying can be done by any interest group that has an organization, ability to mobilize resources and expertise, from the moment the relationship between the group and the target is established, this group begins to be configured as pressure. A group that, through legal mechanisms, seeks to influence decision-making processes (MANCUSO; GOZETTO, 2018).

¹¹ Corporate Sustainability Management: A New Perspective. CNI, 2017. Available at:

<http://www.portaldaindustria.com.br/cni/canais/cni-sustentabilidade/edicao-2017/>. Access on: Jan 08, 2019.

¹² The Green Marketing is an instrument of adequacy and dissemination of the adoption of this "new vision" by companies, since from the emergence of the need to protect environmental resources that starts to govern policies and the way of management of space, there is in the market a new type of customer, more demanding regarding the responsibility for the use of the environment.

To outline an answer to this question, two documents prepared by the Confederation on the issue were analyzed, as described below.

The first is entitled "*Strategic Map of Industry: an agenda for competitiveness 2013-2022*". This map aimed to prepare proposals for the 2014 elections, as the chapter entitled "Environmental Licensing: proposals for improvement" points out. The document lists the main problems faced by entrepreneurs in the EL procedure, based on a survey conducted in January 2013 with the 27 affiliated federations, through the Executive Management of Environment and Sustainability (Portuguese acronym: GEMAS).

The second document is called "*Environmental Licensing: Proposals for Modernization*", which was part of a material that brought together industry proposals for the 2018 elections. The document brings some innovations in relation to the previous one, because in addition to listing the obstacles that the current system of EL represents for the productive sector, makes a brief comparative analysis with laws of other countries and analyzes the project of the "General Law of Environmental Licensing", which is being processed in the National Congress as PL 3729/04.

In summary, the documents pose as obstacles: the large number of public authorities involved, which generates a high level of bureaucratization and the overlapping of competences between the federative entities and the rigor to which the undertakings are submitted, being a process that contains several phases (PL, IL and OL), extensive deadlines and the accuracy of complex studies. The main recommendations are: to establish and strengthen cooperation instruments between federal entities; ensure the autonomy of the licensing body; simplify the environmental licensing of low-impact enterprises and activities and use effective planning tools that guide, simplify, and streamline environmental licensing.

For this study, PL 3729/04 was analyzed in its last version, the substitute proposed by the rapporteur Mauro Pereira (MDB/RS) of the Finance and Taxation Committee (Portuguese acronym: CFT), submitted on 29 August 2017 and unanimously approved by the committee. The CNI exalts the proposal in two aspects: the legislator's concern to reduce costs and the EL deadlines. In Chart 1, it is possible to visualize the positive aspects of the project, highlighted by the sector:

Chart 1– Positive innovations in the CNI vision, incorporated by the CFT

INNOVATIONS BROUGHT BY PL 3729/04	DESCRIPTION
Simplification of the number of Licenses	By adopting the following modalities: biphasic, single license and by membership and commitment.
Simplification of Procedures	By renewing the Operating License (OL) by a specific form; the integration of the execution of environmental constraints where there are activities or enterprise with overlapping areas of influence; the definition of the typology of undertakings and activities not subject to licensing; reducing the content of environmental studies and constraints; the non-requirement of EIS/EIR only because the project is located in the Coastal Zone, among others.
Simplification of the Procedure Before the Authorities Involved	The licensing process and the dispatch of the environmental license are not impaired due to the lack of manifestation of the intervening bodies within the legally established period, since the manifestation of the authorities involved would become non-binding. In the event of the periods legally provided for, without the environmental license being issued, the supplementary licensing jurisdiction is established, in accordance with § 3 of art. 14 complementary law 140/2011.
Facilitating Access to Information:	The Government must maintain a database with documents related to the licensing process, made available on the Internet.
Encouraging the Regularization of the Enterprise or Activity	By signing the Term of Commitment, preventing new assessments based on the absence of environmental permits.
Expansion of Social Participation Spaces	For the hearing of actors who are outside the environment of collegiate and public audiences: social manifestation over the Internet; holding participatory meetings with experts and stakeholders; and technical meetings in person or via the Internet.
Exclusion of the Culpable Modality of the Civil Servant	Typified in art. 67 of Law 9.605/98 – Environmental Crimes Law related to the granting of license, authorization or permission in disagreement with environmental standards (with a sentence of three months to one year of detention, without prejudice to the fine).

Source: Author's elaboration. Data taken from the document "Environmental Licensing: Proposals for Modernization", CNI, 2018.

Despite pointing out the good aspects of the PL, the sector still lists points that it calls "Obstacles to Economic Activity", they are: untying the instruments of territorial governance (AAE and ZEE) of the Bill; fragmented administrative process; high cost and bureaucracy; disintegration of federated entities; dependence on the managing body belonging to SNUC; complexity in the EL system for medium and large enterprises and little incentive to use new technologies and modern forms of environmental management.

The documents analyzed above were constructed by the CNI in electoral contexts, specifically directed to the Executive Branch, however, deal with a matter that directly involves the Legislative Branch, especially the second document, which brings analysis on a PL that is being processed within the committees of the House of Representatives. We can infer in this sense that there is an attempt by the CNI to create a cohesion between the positions of the Executive and Legislative Branches, although the PL is in the power of the Legislature, drawing

the executive's attention to the agenda is a chance that it will be appreciated more quickly, and that meets the interests of industry. According to Resende (2018),

Santos shows that there is an influence of the CNI lobbying on the results of the Legislative Branch, being more effective within the committees and when there is a synergy between the Executive Branch and the productive sector. Thus, the influence exerted by interest groups is a central aspect of this debate, since the groups articulate strategies of action with the public authorities with the objective of affecting their decisions (SANTOS, 2014 *apud* RESENDE, 2018, p. 167).

Seeking to corroborate the literature that highlights the power of the business sector as a political actor (DINIZ; BOSCHI, 1999; MANCUSO, 2007), in the next topic we will analyze how the influence of industrial enterprises occurred in the processing of the PL 3729/2004 called the "General Licensing Law". In a complementary way, we will seek to answer which strategies were used by the sector to achieve its objectives.

4 Procedure of the PL 3729/04 in committees: divergent or convergent positioning?

Mr. Luciano Zica (PT/SP) presented the Bill of Law 3,729 of 2004 on June 8 in co-authorship with fourteen other representatives of the Workers' Party, representatives of various regions of the country. The project is currently called the "General Law of Environmental Licensing", and has as its primary objective to regulate item IV of paragraph 1, art. 255 of the Federal Constitution (CF) of 1988. According to Cabral,

Article 225 of the 1988 Federal Constitution (Chapter VI – Environment) reinforces what is provided for in the Law 6,938/81 and the CONAMA Resolution 001/86, when it establishes that the installation of a potentially environmental degradation undertaking depends on a previous environmental impact study, which will subsidize the licensing process. The mandatory environmental licensing for large economic enterprises has become, since its creation, one of the most controversial themes of the PNMA, among representatives of the productive sectors and the public authorities (CABRAL, 2007, p. 22).

The environmental licensing system is currently regulated through the resolutions of the CONAMA, the PNMA and the legislative decrees of the Executive Branch about the subject. Among the experts on the subject, there is much talk of the need for a federal law that regulates the process as a whole and fills gaps that create legal uncertainty, unconstitutional actions and inconsistencies regarding the definitions of competencies of the federation, states and municipalities.

PL 3729/04 is seen by legislators as an opportunity to overcome the limitations imposed by regulatory frameworks already in force. The bill has a long process, has been filed and unfiled and has passed four committees: Committee on Environment and Sustainable Development (CMADS), Committee on Agriculture, Livestock, Supply and Rural Development

(CAPADR), Finance and Taxation Committee(CFT), Constitution, Justice and Citizenship Commission (CCJC) and, finally, was created by Mayor Rodrigo Maia (Party) a Working Group to discuss the topic.

The bill was initially distributed to the CMADS (according to the theme), CFT and CCJC (according to the Internal Rules of Procedure of the House of Representatives – Portuguese acronym: RICD), on 12/20/2013, application no. 9,153/2013 was granted, presented by Mr. Valdir Collato (MDB/SC) so that the proposal could also be distributed to CAPADR, with the justification that the theme has great breadth and interest to the Committee, which according to RICD, has the competence to discuss topics related to:

According to art. 32, I, of the Rules of Procedure of the House of Representatives, is competent to assess the proposals they have on matters relating to agriculture, professional fishing, social conditions in rural areas, agricultural policy and planning and the policy of technological development of agriculture, the standardization, inspection and supervision of the use of pesticides in agricultural activities, the marketing and export of agricultural products marine and aquaculture policy, and rural electrification policy, among other thematic fields (COLLATO, 2017, p. 3)¹³

Over the years, it is observed that, according to the trajectory of the PL in the Permanent Committees of the House, the CNI adapted its opinion exposed in the Legislative Agendas of industry. Such changes in positioning demonstrate that the degree of convergence or divergence of the interest group with the political actors' changes in each political arena, which is mainly due to the ideological composition prevailing in the committee and the opportunities created for the action of the pressure group. In this case, it is noticeable that recommendations made by the CNI were applied to the text of the substitute (SBT), presented by the CFT and maintained by the sub-order to the SBT presented by the CCJC. Next, we will see how the CNI was positioned in the Legislative Agendas of Industry in parallel to the process of the project.

In the Legislative Agendas of Industry, from 2005 to 2013¹⁴, the CNI is divergent with the points to the project that processed in the CMADS, including in 2010 and 2011 the CNI points out setbacks in the content of the substitute¹⁵ presented by rapporteur André de Paula (DEM/EP) of the Environment Committee. During these years the divergent arguments were: the setting of an expiration date for the EIS/EIR; provision for the revocation of the Prior and Installation licenses, left to the discretion of the public administrator; excessive interference of NGOs or citizens at any stage of licensing, impacting the planning and investments already

¹³Application No. 9,153/2013, submitted on 11/28/2013 by Mr. Valdir Collato (MDB/SC). Available at: https://www.camara.gov.br/proposicoesWeb/prop_requerimentos.jsessionid=E691F78B6F1AC610F51D1417A304E45B.proposicoesWebExterno1?idProposicao=257161#marcao-conteudo-portal. Access on: Jan 08, 2019.

¹⁴ Legislative Agenda of the Industry 2015. CNI: Brasília, 2015. Available at: <http://www.portaldaindustria.com.br/cni/canais/agenda-legislativa-home/>. Access on: Nov 15, 2018.

¹⁵ House of Representatives. Report of the Committee on environment and sustainable development to the Bill No. 3,729, of 2004. CMADS, 2009. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=464842>. Access on: Nov 15, 2018.

made by the entrepreneur and permission for environmental agencies to intervene in the production processes – requiring auditing, environmental insurance, balance of greenhouse gas emissions etc. – a measure that confers excessive discretion to environmental agencies and causes serious legal uncertainty. There were two primary concerns in the divergences presented: the license deadlines, studies required in the process and the excessive intervention of other opposing groups and the public authorities as regulator.

The recommendations made in the agendas were: contemplate the classification of the enterprise according to the size/potential polluter; simplified licensing for low-impact cases or entrepreneurs whose practices have their practices recognized by environmental certification and longer deadlines, or until the exemption of the renewal requirement, for enterprises that regularly comply with the constraints (ALIN, 2013).

In 2015, the ALIN refers to the substitute approved in CAPADR, authored by Mr. Moreira Mendes (PSD/RO) being convergent and pointing out the positive aspects of the project. The vote of the rapporteur Moreira Mendes (CAPADR, 2013, p. 5)¹⁶, points that:

A study promoted by the CNI, together with more than 500 business representatives, pointed to environmental licensing as one of the strategic aspects to be improved to provide greater competitiveness for the national industry to be considered by the year 2020. The World Bank points out that in the electricity sector the cost of "dealing" with environmental and social issues represents 12% of the value of hydroelectric power plant construction works.

The rapporteur's SBT includes simplified rites, maximum and well-defined deadlines for issuing permits according to the nature, size and potential polluter of the enterprise. In 2017 the publication of the Legislative Agenda of the Industry brought to focus the SBT adopted by the Committee on Finance and Taxation, emphasizing that it incorporates several positive elements of the text adopted by the CAPADR and based on the Strategic Map of Industry 2013-2022, in which structural problems of the EL system were identified by the CNI, the text of the CFT was:

¹⁶ House of Representatives. Report of the Committee on Agriculture, Livestock, Supply and Rural Development to Bill No. 3,729, 2004. CAPADR, April 29, 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=613715>. Access on: Nov 15, 2018.

The result of a broad agreement of institutions representing the private and public sectors and includes a large part of the elements provided for in the texts approved by the Committees on Agriculture and the Environment. The text reduces bureaucracy and provides greater transparency and standardization to the administrative procedure of licensing processes, with the provision of rites differentiated according to the size, nature and potential polluter of the enterprises, according to the framework to be defined by the competent licensing body. Several other measures, provided for in the text, contribute to the improvement of the process, such as: a) prediction of simplified rites; b) sharing of studies by ventures of the same nature; c) establishment of deadlines for the manifestation of the licensing bodies involved in the; d) greater autonomy to the licensing body in relation to the bodies involved; e) creation of incentive mechanisms for the voluntary improvement of the environmental management of enterprises (ALIN, 2017)

From the descriptive analysis made on the positioning of industry through the edition of the Legislative Agenda of the Industry, and the complementary documents analyzed directed to the Executive Branch, it is possible to affirm that the locus of action of the CNI lobby were the parliamentary committees within the Legislative Branch and the Executive Branch itself, the strategy chosen by the CNI in publishing materials aimed at both branches can be explained by the institutional design in force in the Brazilian political system, Figueiredo and Limonge say that, despite the strong agenda power of the Executive, the proposed agenda is a joint production with the Legislature and most of the political forces that compose it, as highlighted by the:

It is not possible to identify an agenda of the Executive, formulated in isolation and independently of the Legislature. There is no previously formulated and finished agenda for which, in a second moment, support is sought. The agenda effectively submitted by the Executive to the Legislature is the agenda of the majority, whose elaboration takes place within the coalition of government in which, by definition, members of the Executive and Legislature participate. The government's agenda is formed endogenously (FIGUEIREDO; LIMONGE, 2001, p.86).

If there is a disparity of positions mentioned in the ALIN, with each step that the bill was reformulated by a certain committee, it is possible to infer that in the CAPADR and CFT the industry lobby had more receptivity and success to the extent that both incorporated the recommendations vocalized by the sector in its SBT's presented, and CMADS, despite having suffered the pressure of the group, was the one that most diverged from the position of the sector. In addition to the Legislative Agendas, we identified four events promoted by the committees in which the CNI participated as a guest to discuss environmental licensing rules and PL 3729/04.

5 Key actors in the process of procedure of the PL 3729/2004

Interest groups act by analyzing and choosing the right time to ensure better success "This means identifying the exact moment, in the course of the decision-making process of the object of interest, in which the pressure group must intervene to assert its positions

(ZAMPIERI, 2013, p. 128). As we have seen, the committees gain a broader and more democratic character, in addition to becoming more permeable to the influence of pressure groups. It is important to note that of course not all interest groups are called to participate or have expertise to act in these spaces effectively. That is why the choice of actors who will be under pressure is important, in the committee space the main target of the lobbies are the rapporteurs.

What led the bill to the CAPADR was the request of Congressman Valdir Collato (MDB/SC) for the bill to be redistributed contemplating the insertion of the committee, this is an access strategy used by the lobby with the objective of locating the bill in a channel more receptive to the interests defended by the sector, according to Cabral:

In short, if there is the possibility of redistributing a bill from one committee less receptive to the interests of the pressure group to another, then the best strategy to be used by the pressure group is to request its redistribution to the board or the chairman of that committee that has a greater degree of receptivity to its interests, rather than the group investing resources in lobbying in political environments that are less favorable to its interests (CABRAL, 2007, p. 128).

Within the National Congress, the lobby seeks direct support from representatives who can incorporate their interests into the text of the bill in question, either by facilitating lobbyists' access-to-access channels or by proposing replacements, amendments, requirements. The socio-political profile of these Members is a decisive aspect in determining cooperation with the pressure group, that is, characteristics such as: profession; affiliations; declared heritage; bench in plenary and authored bills, are used as an indication for the lobby to seek allies in parliament. About the subject, scholars of the theme highlight:

Another relevant factor for the decision-making outcome is the profile of the decision-maker. This profile is composed of a set of subjective characteristics of the decision-making, such as values, preferences, ideologies, worldviews, convictions, opinions and beliefs. The profile of the decision maker can make him more or less receptive to the specific lobbies of the various social segments. Precisely for this, often the work of lobbyists is preceded by a careful study of the profile of the decision-maker (MANCUSO; GOZETTO, 2018, p. 74).

In this context it is possible to infer that some actors were allies of industry lobby within the legislative process, one of them is Congressman Valdir Collato, agribusiness entrepreneur; agronomist engineer and according to the statement made to the Electoral Court, has total declared assets: R\$ 1,399,105.16 and total area in rural properties: 2,187.0325 hectares. Collato is also known in Congress for being the author of eight bills against the demarcation of

indigenous lands, in addition to being part of the ruralist bench¹⁷ and Environment Coordinator of the Joint Parliamentary Front of Agriculture (Portuguese acronym: FPA).

In the CAPADR the lobby of the productive sector gained another ally, the former Mr. Moreira Mendes (PSD/RO), appointed rapporteur of the committee by the President of the Committee Paulo Feijó (PR/RJ), both members of the ruralist bench. Moreira Mendes was a member of the FPA, landowner and known for his critical discourse on the demarcation of indigenous lands, besides being the author of the PL 3842/2012, which modifies the concept of slave labor. Like them, Mauro Pereira (MDB/RS), rapporteur of the CFT and Marcos Rogério (DEM/RO), rapporteur of the CCJC, are representatives linked to the defense of agribusiness.

There is a great articulation of rural representatives around the agenda in question, in addition to the ability to locate actors in strategic positions that can influence the process of the bill. This level of organization can be explained by the existence of the FPA, a strong parliamentary front that brings together 27 senators and 234 representatives, aims to formally defend the interests of agribusiness within the National Congress, and is postulated as an ally of the Brazilian productive sector. A reflection of the importance of the front was evident from the appointment of the President of the FPA, Tereza Cristina (DEM/MS) to compose the government of Jair Bolsonaro, at the head of the Ministry of Agriculture. In an interview with *Agência Câmara Notícias*, the new minister declared that PL 3729/2004 is a priority, according to the news:

Cristina said she will talk with the president of the House of Representatives, Rodrigo Maia, to try to approve later this year the flexibility in environmental licensing, one of the priority agendas of the Joint Parliamentary Front of Agriculture. There will be a conversation with the president to see the agendas that the sector can still vote on this year and, among these, licensing is perhaps the most important (AGÊNCIA CÂMARA NOTÍCIAS, 2018).

The report presented by the President of the IBAMA on May 5, 2017¹⁸, Suely Araújo, analyzes the opinion of the Rapporteur of the CFT and makes a pessimistic diagnosis as to the extent of the list of exemptions proposed in the text, since several of these activities or undertakings can be the target of simplified license and not simply the exemption. According to the IBAMA, this article reflects the non-understanding of EL, which is seen as a barrier and not as a tool for the correct use of the environment.

Araújo says that the text prepared by Mr. Mauro Pereira, rapporteur of the CFT, was built on the basis of the proposal made by the FPA and had been monitored by the Ministry of

¹⁷ The Inter-Union Department of Parliamentary Advisory (Portuguese acronym: DIAP) "classifies as a member of the ruralist bench the representative who, even though he is not a rural owner or working in the agribusiness area, assumes without embarrassment the defense of the bench's claims, not only in plenary or committees, but in press interviews and other public demonstrations". Available at: <http://www.diap.org.br/index.php/noticias/agencia-diap/28538-bancada-ruralista-diminui-na-camara-e-aumenta-no-senado>. Access on: Dec 27, 2018.

¹⁸ Opinion No 001/2017 - PRESIDÊNCIA/IBAMA. Available at: <https://www.ibama.gov.br/component/phocadownload/file/3238-parecer-001-2017-presidencia-ibama-de-05-de-maio-de-2017>. Access on: Nov 15, 2018.

the Environment (Portuguese acronym: MMA) seeking to generate consensus and agreement between stakeholders, many changes were made, maintaining the format suggested by the FPA and CNI, in the opinion of the IBAMA Presidency is a text that should not be accepted by the MMA, because it contains many environmental setbacks and aspects that will generate the opposite effect of what is expected: legal uncertainty, judicialization of processes and risks to the environment.

Conclusion

The theme addressed in this article focuses on the legislative agenda of Brazilian business, focusing on their political performance in deliberative processes concerning the production of rules on environmental licensing. In the face of environmental tragedies involving large enterprises owned by the Brazilian private company Vale S.A – disruption of toxic tailings dams in Mariana in 2015 and in Brumadinho in 2019, in municipalities in the State of Minas Gerais, both investigated as environmental crimes – the press, the Public Prosecutor's Office and Non-Governmental Organizations pointed out errors in the EIS and in the inspection made by environmental agencies. Such events are demonstrations of possible socio-environmental implications of inadequate environmental legislation, investments in the structure of the bodies responsible for bidding procedures, supervision and monitoring of compliance with conditionalities.

Despite criticism of the legislation in force, what prevails in the configuration of the bill under analysis is the defense of a flexible regulatory framework and the dismantling of the structure of the rites previously provided for environmental licensing. This preference is noticeable in Article 4, which creates three new license typologies, aiming to simplify and streamline the process, which are: Single Environmental License (SEL); Membership and Commitment License (MCL); Corrective Operation License (COL), in addition to those previously provided: Prior license (PL); Installation License (IL) and Operating License (OL).

The SEL issues license for installation and operation of activities or enterprises, only in one step, in addition to not obliging the production of EIS/EIR; SEL may be issued electronically, only "by declaration of adherence and commitment of the entrepreneur" claiming to be in accordance with the environmental and structural criteria of the area where the project or activity is to be located, also does not require the preparation of EIS/EIR; the COL as described in the concept detailing (art. 2, *caput* XV), represents an apparent amnesty for entrepreneurs who already maintained activities without an environmental license, making clear the objective of providing conditions for the activity to continue, but adequate environmental standards.

Based on the data analysis, it is concluded that the specific objectives outlined in the study were achieved. We identified that the CNI has the power to articulate with specific representatives and seeks to regiment allies who have insertion and expertise in issues of interest to defend their preferences in relation to the particular format of public policy under discussion. As an example of an ally of the group, or relevant political actor in the process under analysis, Representatives Valdir Collato, Moreira Mendes and others linked to the FPA stood out. Regarding the strategies adopted, the CNI focused on the political arenas of the Legislature where there was greater receptivity to the group's political preference, especially in the CAPADR and CFT, in which it was found that the political pressure of this organization was successful in its lobbying, causing the current text of the bill to reflect its recommendations, as demonstrated in Chart 1 (p. 11).

The strategies adopted by the CNI were successful due to its ability to reconcile the type of action and the right time to act. As an example, we have the materials published in electoral contexts and during the processing of the proposal in specific committees and the participation in public hearings. Therefore, we corroborate contemporary studies on the performance of interest groups within the legislative process, which highlight the committees as privileged spaces for the production of information and lobbying practices.

Environmental licensing is an environmental control measure provided for by law, which represents for the productive sector burden and restrictions regarding the use of natural resources and territories for implementing enterprise and development of potentially polluting and degrading activities for the environment. That is why the spheres of public authority that formulate and perform such a control measure become the target of business lobbies, as they seek to minimize the possible restrictions, costs and bureaucracy that harm their activities.

Studies on lobbying in Brazil present a concern that becomes evident in the process analyzed, the asymmetry of power between pressure groups. The CNI was able to mobilize financial resources; specialized legal and environmental frameworks to intervene in public spaces; publish documents; occupy the decision-making spaces and regiment representatives who are their direct representatives. In other words, it stood out in lawful lobbying, unlike other environmental and ethnic organizations, which also sought to intervene in the process. As the literature shows, the ability of different interest groups to raise funds and maintain active lobbies is unequal. This asymmetry of power in the system of representation of interests can lead to social and environmental conflicts and injustices, considering that a group has more capacity for intervention, as Mancuso and Gozetto argue (2011).

Conflicts and disputes are perpetuated in the decision-making arenas, as evidenced by the article of *Agência Câmara Notícias* entitled "Representatives differ on the direction of Brazilian environmental policy - Environmental and agricultural Parliamentary Fronts point out the challenges of the sector in the next legislature"¹⁹. In the matter, Giovanni Cherini (PR/RS), a member of the FPA, declares:

Brazil has 50% of indigenous areas and preserved forests. The trade balance of R\$ 95 billion was balanced according to agribusiness. It is necessary to take the exaggerations and reduce the time of environmental permits. It is not the international organizations that have to say what Brazil has to do.

In 2019, the PL 3729/2004 was removed from the plenary agenda by the President of the House of Representatives (Rodrigo Maia - DEM) to constitute a General Committee, with the justification of seeking the compatibility of the text with the interests involved. In addition, on June 3 of the same year, a Working Group was created by this political actor, with twelve members of different parties, under the coordination of Mr. Kim Kataguiri (DEM/SP) with the objective of discussing proposals to improve the matter and listen to sectors of society. This shows that the parliamentary committees had no terminative power and that the bill could still be modified.

Given the current composition of ministries of the government Jair Bolsonaro (2019-2022), having as Minister of Agriculture Tereza Cristina, linked to the FPA and as Minister of the Environment Ricardo Salles, who had his candidacy for the position defended by the Brazilian Rural Society (Portuguese acronym: SRB), it is possible to raise the hypothesis that the environmental agenda will meet the business interests, represented by the CNI, and ruralists, represented by the FPA, because these sectors are strongly represented in the Executive and Legislative Branches. The evident asymmetry between pressure groups, which operate in opposing fields in this context, demonstrates the need for other actors to appropriate lawful lobbying practices as a representation of interests, which can contribute to the integration of political agendas and communities, making the decision-making process legitimate, giving visibility to different views on the same demand.

¹⁹ House of Representatives/News - Members differ on the direction of Brazilian environmental policy. Available in: <https://www.camara.leg.br/noticias/550491-deputados-divergem-sobre-rumos-da-politica-ambiental-brasileira/>. Access on: Jan 06, 2019.

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Article submitted on 2019-12-26

Resubmitted on 2020-04-03

Accepted on 2020-04-16