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Legal Aspects of Licensing by Adhesion and Commitment (LAC)

Aspectos jurídicos da Licença por Adesão e Compromisso (LAC)

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Resumo

O presente trabalho pretende analisar os aspectos jurídicos do Licenciamento Ambiental por Compromisso (LAC), a partir dos dispositivos constitucionais e legais incidentes no tema. Para tanto, são expostas as bases conceituais do instituto e sua finalidade. Depois, frente à problemática trazida ao Poder Judiciário, notadamente ao Supremo Tribunal Federal, responde-se a duas questões: o LAC é constitucional, mesmo se previsto por ato normativo municipal ou estadual, bem como quais os requisitos para se implementá-lo. Aplicou-se o método dedutivo e exploratório para se chegar às conclusões ao final expostas.

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Palavras-chave: meio ambiente; licença ambiental; adesão e compromisso; constitucionalidade; planejamento ambiental.

Abstract

The present paper intends to analyze the legal aspects of Environmental Licensing by Commitment (LAC), from the constitutional and legal provisions on the subject. Therefore, the conceptual bases of the institute and its purpose are exposed. Then, faced with the problems brought to the Judiciary, notably to the Federal Supreme Court, two questions are answered: the LAC is constitutional, even if provided for by a municipal or state normative act, as well as what are the requirements to implement it. The deductive and exploratory method was applied to reach the conclusions presented at the end.

Keywords: *environment; environmental license; adherence and commitment; constitutionality; environmental planning.*

Contents

1. Introduction

In Brazil, environmental licensing is one of the forms of exercising police power or administrative law in the protection and conservation of ecosystems. Through licensing, the operation of certain activities that can affect flora, fauna, etc., even if potentially, will be allowed or not. Therefore, control bodies make a prognosis judgment, that is, they evaluate the negative and positive externalities of the undertaking to the maximum, comparing them with the legal, biological, chemical, geological aspects etc., noting if it is possible to grant the license, in legal and environmental terms. Therefore, an intricate process precedes the environmental license, involving, in most cases, a wide range of multiple scientific knowledge and, in some cases, the participation of society in public hearings.

However, the process is not always structured that way. There are environmental licenses that do not have this level of sophistication, especially in relation to activities whose externalities are well known. In these cases, inspection exists, but does not require complex procedures.

Consequently, many bodies of the Brazilian Federation began to edit laws that created what is conventionally called “licensing by adhesion and commitment”, abbreviated as “LAC”, with the purpose and justification of simplifying the procedure for ordering these types of activities (PARTIDÁRIO, 1999, p. 17).

Many of these regulations were the subject of a series of debates and Direct Actions of Unconstitutionality (ADI), including in the Supreme Federal Court (STF). On the one hand it is argued that LAC simplifies and makes the procedure less burdensome; however, on the other hand others claim that it relativizes environmental protection, increasing the potential for irreversible damage to the environment. The current debate on the subject is relevant not only to the legal context, but also to the social context.

This article intends to describe what LAC is and how it is structured by various bodies of the Federation. Also, the legal arguments about its constitutionality are analyzed, especially because state laws create new environmental licenses, along with the existing ones. These new licenses are contrasted with the national regulations coming from the National Council for the Environment (CONAMA).

Throughout this article, the deductive procedure method is applied, departing from the general aspects of the theme, that is, from legal-normative premises that support the argumentative line, in order to deliver an answer to the following question: Can LAC be created by state law, according to the text of the Constitution of the Federative Republic of Brazil (CF/88)? If so, what are the conditions to be observed? The approach method will be exploratory, with the presentation of a series of arguments that constitute the answer to the aforementioned question, offering an argumentative line for the conclusion about the constitutionality or not of the license and, if so, what would be its conditionings. The analysis will be limited to the legal aspects of the subject.

2. Legal aspects of environmental licensing

Licenses are a unilateral and bound administrative act (HEINEN, 2021, p. 837-838; MEDAUAR; 2016, p. 403), granting the administrator the right to practice a certain material activity, as long as it is proven that it has met certain requirements (MELLO, 2009, p. 431-432). It must be clear that, when

the interested party fulfills the conditions required to obtain the license, they have a subjective right to it.

This is precisely the main difference between the license and the authorization because the granting of the authorization is discretionary[1], while the license is bound. For example: a license to have a certain business in a specific neighborhood; a license to drive motor vehicles carrying passengers; a license to exercise a professional activity, etc. Also, the terms "environmental authorization" and "environmental license" have not been used uniformly in Brazil. (MACHADO, 2000, p. 250).

Indeed, there is a particularity regarding the environmental license. According to Law no. 6938/81, for activities that may use or degrade environmental resources, it is necessary to have a previous license. Therefore, such administrative act makes economic development compatible with environmental protection. On the other hand, it remains as a way of implementing the control of certain activities by the State (MILARÉ, 2004, p. 482).

Thus, the matter of "environmental license" calls for an interdisciplinary study. So much so that, in its organic and formal aspect, it is regulated by administrative law; but its content, that is, under the material aspect, is regulated by environmental law. And, in any case, the decision may well be based on the knowledge of other subjects, such as biology, chemistry, forestry engineering, geology, etc. All these aspects, of course, must be considered when granting or not granting "licenses".

It is important to focus the analysis on the object of the administrative act. That is to say that the environmental license is not an act of *intuito personae*. This can be noticed based on the normative text of a series of provisions that deal with the topic, namely:

- CF/88, article 225, § 1, item IV: an impact study of the work or activity is required;
- Complementary Law (LC) no. 140/11, article 2, item I: when it conceptualizes the "environmental license", in order to evaluate the undertaking;
- CONAMA Resolution no. 237/97, article 1, item I and article 2: it repeats the constitutional text indicating that the license refers to undertakings and activities;

[1] Although Juarez Freitas "reconsiders" this discretion in authorization, when he comments on the "duty of good administration" (FREITAS, 2007, p. 84-86).

- Law no. 6938/81, article 9, item IV and article 10: also refers that the object of the license refers to undertakings and activities;

Thus, in interpreting these provisions, the conclusion is that object of the licensing is the activity or undertaking, not the person. This differs from other licenses, such as those to drive motor vehicles (*e.g.*, National Driver's License) or to carry a firearm, which are individual licenses, because the person's characteristics are relevant. In the case of the environmental license, it does not matter who operates the undertaking, but how it is operated.

The legislator and the environmental inspector do not ask "who might pollute the environment?", but rather, "what can cause this damage?". So much so that, if the operation already existed, and the legal entity benefiting from the license were sold, there would be the possibility of changing the responsibility. This is why environmental responsibility is relative to the thing: *propter rem*. These legal aspects are intrinsic to the topics that follow, specifically regarding Licensing by Adhesion and Commitment (LAC).

3. Considerations on how Licensing by Adhesion and Commitment (LAC) is structured and the debate on the subject

From the outset, it is important to point out that "Licensing by Adhesion and Commitment" is not "self-licensing", because the latter is not provided for in the legislation on the subject. The latter would be an institution created to give the idea that the citizen can apply for a license, exempting the inspection by the environmental agency, as well as that the applicant would not need to send information to environmental agencies. In the "Licensing by Adhesion and Commitment" (LAC), there is inspection and also a need to send relevant information about the potentially polluting activity. The list of data to be delivered by the interested party will be determined in advance by the licensing agency or by whom the law so refers [2]. After all, environmental licensing is still an instrument of environmental management (MACHADO, 2000, p. 121; FARIAS, 2011, p. 21).

In fact, LAC allows the company to anticipate a series of information that will be audited later. The practical effect consists of reversing the

[2] In Rio Grande do Sul, the State Environment Council (CONSEMA) will define the information to be delivered by the company in the Declaration of Adhesion and Commitment – DAC (article 54 of State Law no. 15434/2020).

licensing phases, anticipating, in a low environmental impact undertaking, the possibility of continuing an activity, sending the information, which will be subject to later inspection. If any inconsistency is found, the activity can be stopped immediately.

In formal terms, LAC should deal with activities to be listed and previously defined by the Environment Councils – municipal, state, and federal. Therefore, the representatives of society, which make up the entity, will be responsible for debating and listing what will be submitted to that type of licensing. There would not be a "blank check", because the society legally represented, in a democratic way, would deal with the issue.

In material terms, the activities to be submitted to LAC should be those that are already known to work, that is, their implementation is standardized, and the risks are already widely understood. For example, a gas station in an urban area already has its effects, complexity and risks known to technicians, public agencies, and entrepreneurs. The inspection of issues such as safety, urban zoning, and sanitary conditions is already audited in advance by the relevant municipal, state, and federal bodies.

In this case, the activities to be submitted to LAC should be linked to the planning tools that already exist and that allow prior licensing or exemption from licensing. For example: expedited license for the transport of dangerous goods is already widely practiced and could be the object of LAC.

The subject is protected by a series of state regulations. For instance, Rio Grande do Sul Law no. 15434/2020 (State Environmental Code), article 54; as well as Santa Catarina Law no. 14675/2009 (State Environmental Code) in article 36, *caput*, and § 4 to 15, and in article 40, item IV and § 4; Resolution 02/2019 of the Ceará State Environment Council (Coema); CEMA Resolution no. 107/2020, of the Paraná State Environment Council. At the federal level, there is a bill in discussion, which addresses the same issue. Also, there are other proposals, such as: Proposal for Constitutional Amendment (PEC) no. 65/2012, Senate Bill (PLS) no. 654 of 2015 and Proposal for Amendment of Resolutions (PAR) CONAMA no. 001 and no. 237.

These laws were the subject of a series of lawsuits examining their constitutionality, namely ADI no. 5312/TO (BRASIL, 2021a)[3], ADI no. 5475/AP

[3] STF, ADI no. 5312-TO, Plenary, Minister Rapporteur Alexandre de Moares, judgment 25/10/2018.

(BRASIL, 2021b)[4] and ADI no. 4615/CE (BRASIL, 2021c)[5]. The latter, on merit, declared the State of Ceará's license by adhesion constitutional. The *ratio decidendi*, which sets the precedent, decided that federal states can create licenses of this nature, so that there is no violation of constitutional precepts.

On the other hand, on ADI no. 5312/TO (BRASIL, 2021a), the STF declared that the state law of Tocantins, which exempted from licensing activities identified according to the economic segment, regardless of their potential for degradation, was unconstitutional. One of the main arguments was that the legislation even exempted previous Environmental Impact Study (EIA), which violated the provisions of article 225, § 1, item IV, of the Brazilian Constitution. So, in this case, the Supreme Court concluded that there was "deficient protection of the fundamental right to an ecologically balanced environment" (BRASIL, 2021a).

So, the environmental licensing by commitment intends to be an instrument of environmental management that provides citizens with the reduction of transaction costs in activities with low potential for damage to the ecosystem. And, in this aspect, it should not reduce the inspection of the activity postponing it until after the request.

In this brief overview one sees that formal and material matters are interrelated. The first concerns whether the federated states can edit norms and create environmental licenses, such as LAC, along with the express provision in national law. The second wonders whether the relativization of formalities in relation to licensing would violate article 225 of CF/88, thus establishing, in theory, a deficient protection of the environment. These two complexities will be the subject of the following topics.

4. Constitutionality of LAC created by state or municipal norm – formal aspect

The issue cannot be defined by CONAMA Resolution no. 237/1997, because the provisions of LC no. 140/2011, which provides for the powers to legislate on the subject, must be applied. In other words, the resolution does

[4] The lawsuit goes against article 12, item IV, and § 7, of Amapá Complementary Law no. 5/1994, amended by Complementary Law no. 70/2012, to create the "Single Environmental License (LAU)". The reasons for the decision are relevant to the LAC debate: can the member state legislate on environmental licenses, along with the federal provisions on the subject? – STF, ADI no. 5475-AP, Rapporteur Minister Cármen Lúcia, Plenary, judgment 04/20/2020.

[5] STF, ADI no. 4.615/CE, Plan, Rapporteur Minister Roberto Barroso, Electronic Justice Gazette 233, of 10/28/2019.

not apply to States and Municipalities, because it has a federal and not a national character. The Complementary Law should regulate the common competence of the federation entities, as provided by article 23, item VI, of CF/88 (common attribution to protect the environment and combat pollution in any of its forms) and sole paragraph of the same article[6].

Therefore, the distribution of environmental competences should not be done by the CONAMA Resolution, but by a Complementary Law, in this case, LC no. 140/2011, which is a later law and hierarchically superior to that resolution. This rule, under the terms of items III, VI and VII of the *caput* and the sole paragraph of article 23 of CF/88, defined the powers of the Union, States, Federal District and Municipalities in administrative actions to protect the environment and defined the material competences for licensing. In other words, it declared which federated body licenses each subject. The Complementary Law of 2011 exhaustively regulated the subject in the following provisions: article 7, item XIV and sole paragraph; article 8 items XIV and XV; and article 9, items XII and XIV[7]. Therefore, CONAMA Resolution

[6] CF/88, article 23, sole paragraph: "Complementary laws will establish norms for cooperation between the Union and the States, the Federal District and the Municipalities, with a view to balancing development and well-being at the national level.".

[7] LC no. 140/2011: "Article 7 The following are administrative actions of the Union: (...) XIV - promote the environmental licensing of enterprises and activities: a) located or jointly developed in Brazil and in a neighboring country; b) located or developed in the territorial sea, on the continental shelf or in the exclusive economic zone; c) located or developed on indigenous lands; d) located or developed in conservation units established by the Union, except in Environmental Protection Areas (APAs); e) located or developed in 2 (two) or more States; f) of a military nature, with the exception of environmental licensing, under the terms of an act of the Executive Power, those provided for in the preparation and employment of the Armed Forces, as provided for in Complementary Law no. 97, of June 9th, 1999; g) destined to research, mine, produce, process, transport, store and dispose of radioactive material, at any stage, or that use nuclear energy in any of its forms and applications, following the opinion of the National Nuclear Energy Commission (Cnen); or h) that meet the typology established by an act of the Executive Power, based on a proposal by the National Tripartite Commission, ensuring the participation of a member of the National Council for the Environment (Conama), and considering the criteria of size, polluting potential and nature of the activity or enterprise; (...) Sole paragraph. The licensing of undertakings whose location simultaneously comprises areas of the land and sea strips of the coastal zone will be the responsibility of the Union exclusively in the cases provided for in a typology established by an act of the Executive Power, from the proposal of the National Tripartite Commission, ensuring the participation of a member of the National Environment Council (Conama) and considering the criteria of size, polluting potential and nature of the activity or enterprise. Article 8 The administrative actions of the States are: (...) XIV - promote the environmental licensing of activities or undertakings that use environmental resources, effectively or potentially polluting or capable, in any way, of causing environmental degradation, except for the provisions of articles 7 and 9; XV - promote the environmental licensing of activities or undertakings located or developed in conservation units established by the State, except in Environmental Protection Areas (APAs); Article 9 The following are administrative actions of the Municipalities: (...) XIII - exercise control and inspect the activities and undertakings whose attribution to license or authorize, environmentally, is committed to the Municipality; XIV - observing the attributions of the other federative entities provided for in this Complementary Law, promote the environmental licensing of activities or undertakings: (...).".

no. 2371997 cannot be considered the general rule on the subject. It cannot say how States and Municipalities license because it is: (1) Norm hierarchically inferior to a Complementary Law; and (2) Norm prior to LC no. 140/2011. The federation's environmental administrative powers are already regulated by the legislation, and the police power is found in its licensing phase. LC no. 140/2011 distributed administrative powers to each entity of the federation, including the power of police or ordering law – all in the form of the sole paragraph of article 23 of CF/88.

Although it is said that the normative act of CONAMA is dealing with a procedure, it cannot be applied to licensing matters, not even in a subsidiary way. Whoever legislates or has attribution to a topic, determines how it will be done. Therefore, CONAMA Resolution no. 237/1997, in the present case, does not apply to States and Municipalities. Also, each entity of the Federation has full autonomy to legislate on administrative procedures (HEINEN, 2021, p. 1.019-1.020).

On the other hand, the main argument for defending the constitutionality of LAC relies on the argument that there is no exemption from licensing, because in this way the stages of the procedure would be reversed.

The Declaration of Adhesion and Commitment - DAC is not the only instrument capable of authorizing and granting the environmental license, because it only clarifies the transparency of the criteria, pre-conditions, documents, requirements, and environmental conditions established by the licensing authority and in compliance with the defined provisions by law or by other public bodies, such as the Environment Councils. It is a document through which the party becomes aware and assumes its environmental responsibility. DAC does not declare and/or allow self-licensing. It imposes on the entrepreneur one more element of evidence on their responsibility. And the technical criteria will be not in the DAC, since it will only ratify the items included in the licensing process that do not differ from those referred in the so-called "conventional" processes.

The filling of the declaratory document requesting LAC, added to the list of documents previously listed and required from the entrepreneur, establishes a regime of liability to the applicant, given that, if the conditions of the license are not proven, they may even be sanctioned, without prejudice to the revocation of the license. So, it was only clarified how to do licensing, because there is no license by registration.

Another central point on the subject is that a protective and technical practice is being replicated in situations with widely known externalities, only by changing the way in which the procedure is carried out, in line with article 24, item XI, of CF/88.

The application of the principle of subsidiarity gives Municipalities and States the leading role in legislating on issues that affect them, that is, when in doubt, local autonomy must be strengthened and respect for their diversities as characteristics that ensure the Federal State, guaranteeing the essential federative balance (CANOTILHO, 1993 p. 470). In other words, it is up to the States and Municipalities to legislate on regional and local idiosyncrasies (CHEVALLIER, 2009, p. 59) including adapting licensing procedures, which allows the creation of LAC[8].

On the other hand, inspired by the German Basic Law, the principle of subsidiarity would privilege the action of local entities. The role of administrative action would be of the Municipalities, and other entities of the federation would only act when they could not handle the state tasks. Thus, such a rule would determine that local priorities be privileged, and the most distant spheres of the Municipality would be contacted if it cannot solve the problem alone (BARRACHO, 1997, p. 55 *et seq*.; TORRES, 2001, p. 22 *et seq*.).

The STF, when dealing with the subject, was emphatic: "[...] the principle of subsidiarity means, in simple words, the following: everything that the smallest entity can do more quickly, economically and effectively should not be undertaken by the bigger public body." (BRASIL, 2020c).

Furthermore, the CONAMA Resolution may be disconnected from what is practiced in other entities of the Federation. Many of them, for example, as in the case of Rio Grande do Sul, do not use the terminology "environmental impact", mentioned in the federal regulatory act. "Polluting potential" and "size" conditions are applied to define the format and requirements of the permits. It is necessary to combine the two criteria to know what impact is high, medium, or low. These two legal categories define licensing, which is not compatible with the CONAMA definition. And, as such, the application of CONAMA Resolution no. 237 loses meaning. Even article 12, § 1, of the federal resolution allows states to enact rules on simplified licensing.

[8] STF, ADI no. 4615/CE, Minister Rapporteur Roberto Barroso, Electronic Justice Gazette 233, of 10/28/2019, Plenary.

In ADI no. 5996/AM [9] (BRASIL, 2021d) it was declared that, in the exercise of environmental competence, the States and Municipalities should issue more protective norms than those established by the central entity of the Federation. The understanding was that there may be "overlap of political options for varying degrees of protection", as a "circumstance proper to the establishment of concurrent competence on the matter" – a text repeated in the first petition (BRASIL, 2021d). Thus, the decision guaranteed to the Member States: (1) their supplementary competence to legislate on the subject; (2) although establishing different degrees of protection.

So, based on the formal, legal aspects, it is understood that the LAC provision in state and municipal laws, *a priori*, does not transgress the Constitution of the Federative Republic of Brazil. There remains an analysis of the material aspects, that is, what is expected of such licensing, especially in relation to its conditions.

5. Constitutionality of LAC created by state or municipal norm – material aspect and conditions

To face the substantive aspect regarding the constitutionality of LAC, an example will be taken applying a comparative methodology. There are numerous laws that determine environmental zoning. This technique aims at avoiding any rework of analyzing the same repeated situation, providing environmental and legal security (LIMA, 2006). Beforehand, the portion of the territory which may or may not receive an undertaking is defined. In that part of the territory that is likely to receive a certain activity, a series of conditions are defined (*e.g.*, size and type of activity, impact mitigation measures, etc.). Therefore, zoning anticipates how a licensing will be processed. This can be seen in a number of activities: wind energy production, forestry, etc. Following this logic, LAC acts in a very similar way, because it establishes in advance a list of conditions, and which activities can be processed by this form of licensing, and, consequently, which cannot.

Modernity has already imposed ways of operating the ordering law (*e.g.*, police power) in an automated way. There is no longer talk of ignoring this whole process – this is an outdated perspective (MARRARA, 2011. p.

[9] STF, ADI no. 5996-AM, Rapporteur Justice Alexandre de Moraes, Electronic Justice Gazette of 4/30/2020.

231). It is necessary to think about how to live with this process (GUTWIRTH; DE HERT; DE SUTTER, 2008).

Within the scope of Public Administration, there are many innovations brought and implemented by technology. Not only regarding the digitization of administrative acts and processes, but the use of artificial intelligence tools is also noticeable (CORVALÁN, 2018, p. 55-87), the use of drones in environmental inspection, etc. In that sense, a series of internal regulations were issued, added to the promotion of new routines and structures. So, artificial intelligence and disruptive movements make perfect sense, being in line with LAC.

The impact caused by Covid-19 has determined, in many segments, the use of a "digital and disruptive culture". This reality has become perennial, even after the worst effects of the pandemic. In this case, it generates a new way for the State to (inter)relate with citizens, establishing new forms of access to information. Tools such as hyper-documentary navigation, hunting for information through search engines, knowhots or agents programmed to reflect the user's navigation, which allow contextual exploration, the use of dynamic data cards, etc. cause a sensitive transformation in any social relationship (BROWNSWORD and GOODWIN, 2012, p. 46-71) – all of this consistent with the logic of LAC.

On the other hand, the pandemic experienced in 2020 also imposed a guideline in favor of expanding the culture of digital Public Administration, fostering the "digital-state" or what can be called "e-public". This expansion aims to provide greater social control over the acts of the Public Power, but, on the other hand, to provide speed and ease of access to public services. The most synthetic and pragmatic guideline of this "new Public Administration" is guided by the delivery of facilitators to the citizen, in line with the provisions of Law No. 14129/2021. Then, the State starts to face the citizen as a facilitator of their lives.

This "culture" should provide a healthy environment for the promotion of this new conception. Several activities can be implemented for this purpose, such as workshops, courses, educational material, training of public servants who will directly participate in the processing of public services, etc. "Finally, e-public consists of determining to public bodies the need to popularize a digital environment that is literally in the palm of the hand of people who hold a smart phone. To this end, the impact of Covid19 demonstrated to everyone that the relationship between the Public

Administration and those administered has changed." (HEINEN and NÓBREGA, 2020).

In fact, the "digital-state" can be seen as a final product of the "new normal", that is, an even greater social control will be achieved with regard to state activities. This control is required by the democratic standard adopted by the Brazilian Nation from the massification and facilitation of access to public data (HACHEM and FARIA, 2019, p. 193).

This context is open to receiving the LAC, in the global and national perspective on the subject, which intends to advance in debureaucratizing measures, as long as they are (1) known activities and (2) of low environmental impact. The environmental inspection bodies already had measures very similar to LAC, or even milder, without questioning about it. For instance, the cases in which zoning is in place (as previously mentioned). Such areas are mapped and there is legal security for those involved, with licensing being waived or imposed depending on the location of the undertaking. Or the zoning may prohibit that activity. And this perspective is completely concatenated with that kind of licensing.

But, after all, what would be the object of LAC? Ideally, the activities and conditions that may be the object of this modality of environmental licensing should be defined by a normative act of the Environment Councils. Therefore, the representatives of society that make up the body will be responsible for debating and listing what will be submitted to that type of licensing, and how it will be done. That is to say that there is no and there will not be a "blank check", because the legally represented society, in a democratic way, would deal with the issue.

In material terms, the activities to be submitted to LAC are those that are already known to work, that is, their implementation is standardized, and the risks are largely determined. For example, having small and confined animals (poultry), the restoration and improvement of paved roads, because, in this case, the ecosystem is anthropized (one cannot speak of expansion here); telecommunications antennas within tower or pole.

The inspection of issues such as safety, urban zoning, healthiness is audited in advance by the relevant municipal, state, and federal agencies. Planning tools already exist and allow prior licensing or exemption from licensing. These instruments are linked with the LAC perspective. For example, the expedited license for the transport of dangerous goods is already widely practiced and could be the object of LAC.

It is considered simplistic the statement that LAC, if implemented, would protect the environment in a deficient way, because that argument is devoid of content (SOUZA, 2000, p. 25). An allegation formulated in this way would, at the very least, lack concrete evidence of this deficiency. Also, it would require an evaluation of the activities submitted to LAC, conditions required or waived, any increase in cases of environmental degradation after this licensing modality is adopted. Otherwise, any activities exempt from licensing or not subject to licensing would be unconstitutional, because it would lack supervision.

In Licensing by Adhesion and Commitment (LAC), there is inspection and there is a need to send relevant information about the potentially polluting activity. The list of data to be submitted by the interested party will be previously determined by the licensing body or, rather, by legislation. Therefore, LAC does not eliminate and does not necessarily reduce the inspection of potentially polluting activities, given that it only defers control. On the other hand, it aims to rationalize resources to focus on activities of relevant impact.

Strictly speaking, LAC would combine the Preliminary, Installation and Operation License in known activities, and it would be issued in a single act. Therefore, it is much more a matter of procedure, not of substance, because the substantive points of the license are not being changed. The situation is being optimized, not simplified. In fact, such licensing allows the company to anticipate a series of information that will be verified upon presentation and inspection.

Due to these characteristics, such licensing cannot be issued for activities that claim an Environmental Impact Study (EIA), because the permission to generate an impact could only be granted with the prior hearing of society. Likewise, activities that require sophisticated studies or that may generate medium or high environmental impacts, by the postulates of precaution and prevention, cannot be object of LAC. Activities that must undergo studies are not consistent with the logic of LAC, because the ecosystem must be studied before any anthropization takes place.

On the other hand, LAC cannot also be allowed for (1) hypotheses that involve the conversion of areas of remnants of natural environments and (2) for intervention in Permanent Preservation Areas. In the latter case, due to the sensitivity of the biome and the limitations already inserted in the ecosystem, there must always be prior inspection. In other words, and in the

opposite sense, LAC differentiates polluting potential from high impact, leaving it to those who have the competence to say how and what can be licensed, which are the Environment Councils – society's representative body. Therefore, if the National Environmental Protection System allows an agency to say what can be licensed, it can also say how it will be licensed.

After all, "state legislation must conform to local peculiarities, in order to overcome the symmetrical uniformity of federal legislation" (HORTA, 2003, p. 356). In this case, when LAC is disciplined by municipal or state law, the legislator does not depart from the application of federal rules of a general nature, because such a license only agglutinates or simplifies procedures that, materially, represent the existing licenses.

LAC intends to establish an incentive regulation. In this case, the regulation attempts to persuade the addressee of the rule to act in accordance with the proposed conduct. And this is done by consensus. In many situations, economic agents, upon assimilating the regulations, will be able to act in accordance with them, without violating their spirit (BRAITHWAITE, 1982, p. 1466-1507).

The responsive regulation put in place here aims to persuade those affected by the norm. Such form of regulation can be subtle, noticing a community of shared destiny. Therefore, punitive regulations should be an exceptional measure and applied only as a last resort. That's why LAC comes to encourage people to regularize their business (ATIQ, 2014, p. 1070-1116).

Thus, if, on the one hand, the agents involved can receive greater guarantees from regulation and the protection of their interests (eg legal security of relationships, reduction of uncertainties, etc.), on the other hand, regulation can promote a series of goals relevant to the State and/or the community (*e.g.*, social welfare, environment, etc.). This is precisely what the LAC intended to implement.

6. Conclusions

Licensing by Adhesion and Commitment (LAC) is a kind of environmental license in Brazil in which the individual proves the conditions of the license and provides the information required in the application protocol. From this moment on, the applicant can act, and an investigation of the processed information must be carried out, after the request. So, LAC does not waive the inspection, but it just won't be prior to the approval. If

any inconsistency or omission is demonstrated, the license may be revoked. Thus, the content of LAC is the same as the other licenses practiced, differing in terms of the time and moment of evaluation by the environmental agency.

It was noticed that, in formal terms, the forecast and creation of LAC by state and municipal law does not disrespect the Brazilian Constitution, because it would be sheltered by the incidence of LC no. 140/2011, which regulates the distribution of competences among the entities of the National Federation on the subject, in accordance with article 23, sole paragraph, of the constitutional text. Therefore, CONAMA Resolution no. 237 will not and cannot govern the matter.

In material terms, LAC can be done, as long as certain conditions are met. For example, activities subject to an Environmental Impact Study could not be the object of it, because the public hearing would be impaired. Moreover, LAC could not be applied to activities that require sophisticated or complex assessments. Also, this form of licensing could only be operated in situations where one has full knowledge of the territory and ecosystem.

Thus, if, on the one hand, LAC has the merit of speeding up and reducing transaction costs, on the other hand, it must be granted with caution, that is, it must have as its object activities whose externalities are fully known and of low impact. It is essential to consider the institute with the postulates of precaution and prevention.

In addition, the negative aspects evaluated can, in some way, be neutralized by the environmental agency by being diligent. LAC will only prove efficient if applied by an entity that has appropriate structure for a quick subsequent inspection. The institute's loss of legitimacy will be precisely due to the failure or deficiency in the inspection of activities submitted to LAC.

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