

National Data Protection Authority
General Coordination of Technology and Research

Technical Note nº 16/2023/CGTP/ANPD

Subject: Suggestions for legislative impact on bills on the regulation of Artificial Intelligence in Brazil, focusing on PL nº 2338/2023

Reference: Bill No. 2338/2023

1. INTRODUCTION

The regulation of Artificial Intelligence has been a topic of increasing relevance in the Brazilian scenario, reflecting the global importance of the subject and the need to establish clear guidelines for its development and application in our country. The debate on this regulation gained more defined contours with the proposition of PL nº 21/2020.

Since then, the discussion has evolved significantly, culminating in the formation of the Commission of Jurists in the Federal Senate in 2022 (CJUSBIA). This Commission was established with the aim of deepening the study and analysis of the topic, seeking support for the development of a robust regulatory framework appropriate to the Brazilian reality.

The Commission's final report gave rise to Bill No. 2338/2023, presented by Senator Rodrigo Pacheco, which emerged as a significant milestone in the trajectory of AI regulation in Brazil, with the objective of protecting fundamental rights and ensuring the implementation of systems safe and reliable, for the benefit of the human person, the democratic regime and scientific and technological development. The proposal reflects the maturity, advances and lessons learned since the presentation of PL nº 21/2020 and seeks to establish a balance between promoting innovation and guaranteeing citizens' fundamental rights. The analysis and discussion of this project are crucial to defining the direction of AI in the country, and the ANPD positions itself as a key institution in this process.

In this context, it is essential to highlight the active role of the National Data Protection Authority (ANPD) in the debate on AI regulation. The Authority's commitment to ensuring that AI regulation is aligned with the principles and guidelines established by the General Personal Data Protection Law (LGPD) must be reinforced. ANPD's expertise and vision are essential to ensure that citizens' rights are respected in the context of the application of AI, especially with regard to the protection of personal data.

During the 25th Technical Meeting of the ANPD Board of Directors, held on August 3, 2023, the matter was advised to be forwarded to the General Coordination of Technology and Research (CGTP) for the preparation of this Technical Note. Therefore, this document's main objective is to address and propose changes to Bill No. 2338/2023, based on the premises established in the technical study previously conducted and published on July 6, 2023. As forwarded (SUPER doc. No. 4491763), at the 25th Technical Meeting of the Directing Council, held on August 3, 2023, reiterated at the 29th Technical Meeting of the Directing Council (doc. SUPER n. 4549151), held on August 30, 2023, "the Directing Council forwarded the validation of the general contours of the governance model and institutional strengthening for the proposed amendment to Bill 2338/2023" and presentation of a preliminary version of the legislative proposal by September 20, 2023.

2. INTERSECTION BETWEEN PL No. 2338/2023 AND LGPD

As explained in the Preliminary Analysis of Bill No. 2338/2023, the relationship between Bill No. 2338/2023 and the General Personal Data Protection Law is intrinsic and fundamental to understanding the regulatory landscape of Artificial Intelligence in Brazil. Both legislations, although they have different focuses, converge on several points, especially when it comes to the protection of citizens' rights and the governance of emerging technologies.

PL nº 2338/2023 establishes some parameters for the so-called “competent authority”, centrally responsible for the governance of artificial intelligence in Brazil (art. 33). For example, in chapter VIII, Section I, art. 32, it is mentioned that the Executive Branch will designate a competent authority to ensure the implementation and supervision of the law, with the following responsibilities:

Ensure the protection of fundamental rights and other rights affected by the use of artificial intelligence systems;

Promote the development, updating and implementation of the Brazilian Artificial Intelligence Strategy with bodies with related competence;

Promote and develop studies on good practices in the development and use of artificial intelligence systems;

Encourage the adoption of good practices, including codes of conduct, in the development and use of artificial intelligence systems; It is

Promote cooperation actions with protection authorities and to promote the development and use of artificial intelligence systems.

2.1. Protection of rights

The LGPD was established with the primary objective of protecting the fundamental rights of freedom and privacy of Brazilian citizens. It establishes clear guidelines on the processing of personal data, guaranteeing data subjects a series of rights, such as access, correction and deletion of their data. PL nº 2338/2023, in turn, when dealing with the regulation of AI, inevitably addresses issues related to data processing, since many AI systems depend on vast sets of personal data for their operation. Therefore, any discussion about AI must consider the rights of data subjects established by the LGPD.

2.2. Classification of high-risk AI systems

The identification and classification of high-risk AI systems is a crucial point in PL nº 2338/2023. These systems, due to their ability to significantly impact citizens' lives, require special attention in terms of regulation. The LGPD, by establishing rigorous standards for the processing of sensitive data, provides a framework that can be used as a reference to identify and classify such systems, especially those that process sensitive personal data. Furthermore, the competent authority of PL nº 2338/2023 is also provided with the competence to update the list of excessive risk or high risk artificial intelligence systems (art. 18), which, like the LGPD, observes the premise of a risk-based regulatory approach.

2.3. Governance mechanisms

The LGPD introduced the concept of data governance in Brazil, establishing the need for organizations to implement robust policies, practices and procedures to ensure the protection of personal data. PL nº 2338/2023, when addressing AI regulation, also highlights the importance of robust governance mechanisms for AI systems, especially those classified as high risk. The experience and guidelines already established by the LGPD can serve as a basis for developing specific governance mechanisms for AI.

2.4. Incident communications

The competent authority of PL nº 2338/2023 will receive Incident Reports considered serious,

within a reasonable time, as per regulatory definition (art. 31). The authority will be responsible for verifying the severity of the incident, in a procedure very similar to those provided for in the LGPD regarding incidents involving personal data. Even if an artificial intelligence incident goes beyond the concept of security incident provided for by the LGPD, also involving issues such as abusive or illegal algorithmic discrimination, the compromise of critical infrastructures, damage to individuals and property, among other parameters, it is understood that It is expected that the expansion of the procedures for preparing and analyzing Incident Reports can cover these categories, evaluation methodologies and fundamental rights safeguarded by both legislations.

2.5. Coordination with other bodies and authorities

PL No. 2338/2023 also provided for the "coordination of the activities of the competent authority with public bodies and entities responsible for regulating specific sectors of economic activity and

governmental" (art. 34). In other words, as provided for in art. 55-J of the LGPD

[\[i\]](#)

In addition to this parallel in terms of coordination, the same article 34 of PL nº 2338/2023 provides for the maintenance of a permanent communication forum with public administration bodies and entities (§1), coordinated by the competent authority, as well as its awareness when existence of experimental regulatory environments (regulatory sandbox) involving artificial intelligence systems (§2). The project provides for the authority's competence to authorize the operation of regulatory sandboxes for innovation in artificial intelligence (art. 38), which is in line with the efforts already undertaken by the ANPD in this sector, in partnership with the Development Bank of Latin America and the Caribbean - CAF. ANPD's regulatory sandbox pilot program will explore the intersections between artificial intelligence and protection

of data and its design is currently in the consultation phase with society

[\[ii\]](#)

2.6. Regulatory process

In a similar way to what is determined by the LGPD (art. 55-J, §2), PL nº 2338/2023 provides that regulations and standards published by the competent authority will be preceded by public consultation and hearing (art. 35). On this point, it is worth noting that the ANPD was awarded the Gold Seal of Good Regulatory Practices (granted by the Secretariat of Competitiveness and Regulatory Policy, linked to the Ministry of Development, Industry, Commerce and Services). The evaluation criteria included predictability, regulatory quality, social participation and regulatory convergence, as stipulated by Ordinance No. 69, of April 3, 2023. The objective of this evaluation is to highlight and promote high-quality regulatory practices. This is the second time that ANPD has been assessed with the gold seal for its regulatory excellence, which confirms its ability to deal with frontier issues in the technological field, such as the processing of personal data through automated decisions.

2.7. Synthesis: functional compatibility and convergence

In conclusion, the competent authority has the functions of supervision and oversight of the implementation of the law related to artificial intelligence. This authority will have several responsibilities, including protecting fundamental rights affected by AI, promoting and developing studies on good practices in AI, and cooperating with other relevant authorities. In organizational terms and functional competencies, there are several similarities with the ANPD's current set of duties, such as receiving incident reports and assessing the sufficiency of technical and administrative measures capable of mitigating relevant risks to civil liberties and fundamental rights, in conducting public consultations that precede the drafting of regulations and standards, coordination and dialogue with public bodies and entities responsible for regulating specific sectors of economic and governmental activity, and, finally, the promotion and preparation of studies on good practices.

3. MAIN AREAS OF LEGISLATIVE IMPACT

· 3.1. Protection of rights

The protection of rights is an area of emphasis in both the LGPD and PL nº 2338/2023. Both current law and legislative proposal recognize the importance of protecting citizens' rights in a constantly evolving technological scenario. In the context of AI, the ability of systems to make decisions that directly affect individuals makes it essential to guarantee rights such as

objection and review. The LGPD already sets a precedent by allowing data subjects to request a review of automated decisions that affect them. PL nº 2338/2023 must, therefore, align with this premise, ensuring that anyone affected by an AI system has the right to contest and request a review of decisions. This alignment not only strengthens the protection of citizens' rights, but also provides regulatory consistency, facilitating understanding and implementation by entities using AI.

· 3.2. Governance mechanisms

Effective governance is crucial to ensuring AI is developed and used responsibly. PL 2338/2023 introduces the idea of an algorithmic impact assessment, which aims to understand and mitigate the risks associated with the use of AI systems. On the other hand, the LGPD already establishes the need for a Personal Data Protection Impact Report (RIPD) for processes that involve risks to civil liberties and fundamental rights. Both mechanisms make up a governance tool that aims to anticipate and address potential problems before they occur. For effective governance, it is essential that there is clarity about how these two mechanisms relate and complement each other. The relationship between these assessments can be considered, ensuring that when evaluating AI systems, both algorithmic and data protection impacts are considered in an integrated way. Furthermore, art. 30 of PL nº 2338/2023 brings a set of measures of good governance practices that are directly aligned with the measures established in art. 50 of the LGPD, such as the implementation of governance programs.

· 3.3. Competent Authority

Effective regulation of AI in Brazil requires a competent authority that not only understands the technical challenges of AI, but also the ethical and data protection imperatives. ANPD, with its experience and focus on protecting personal data, is ideally positioned to take on this role. Consider, for example, that this Authority is already responsible (i) for determining, evaluating and regulating impact reports on the protection of personal data, which, by definition, involve risks to civil liberties and fundamental rights (arts. 10, § 3rd, 32, 38, 55-J, XIII, LGPD); and (ii) audit discriminatory aspects – that is, involving the right to non-discrimination – in automated processing of personal data (art. 20, § 2, LGPD). ANPD's expertise, recognized through awards such as the Gold Seal of Good Regulatory Practices, demonstrates its ability to deal with complex and frontier issues in the technological area. Furthermore, the ANPD already has the competence to issue regulations and guidelines, monitor and protect holders of personal data in relation to decisions made based on AI systems, under the terms of the LGPD. Likewise, the ANPD has established mechanisms for public consultation, coordination with other bodies and assessment of security incidents, which are essential for the regulation of AI. Recognizing the ANPD as the competent authority for AI regulation in Brazil would not only build on its existing experience, but would also ensure a unified and integrated approach to AI governance and data protection in the country.

4. COMPARED EXPERIENCES

4.1. Proposed AI Act (European Union)

The proposal requires Member States to designate one or more competent authorities, including a national supervisory authority, that would be tasked with overseeing the application and implementation of the AI Act, and establishes a European Artificial Intelligence Council (composed of representatives from Member States and the Commission) within the EU. National market supervisory authorities would be responsible for assessing operators' compliance with obligations and requirements for high-risk AI systems. They would have access to confidential information (including the source code of AI systems) and would be subject to binding confidentiality obligations. Furthermore, they would be required to take any corrective measures to prohibit, restrict, withdraw or recall AI systems that do not comply with the AI Act, or that, although in compliance, present a risk to the health or safety of persons or to fundamental rights or other protection of the public interest.

In case of persistent non-compliance, Member States will have to take all appropriate measures [\[iii\]](#) to restrict, prohibit, recall or withdraw the high-risk AI system in question from the market

4.2. Positions of the French Data Protection Authority - CNIL

The French National Commission for Informatics and Freedoms (CNIL) has positioned itself proactively and determinedly in the AI regulation scenario. This stance is evident in its strategic approach and in

actions it has undertaken in recent years. The CNIL recognizes the emerging challenges associated with AI, especially in relation to the protection of personal data and individual freedoms. The rapid evolution of AI, exemplified by generative systems like ChatGPT and others like it, has brought to light complex questions about transparency, fairness, data protection and individual rights. In response, the CNIL has worked to address these challenges, such as its 2017 publication on the ethical challenges of

algorithms and AI ^[iv].

The CNIL identified the challenges and developed an action plan for AI, structured around four main pillars: understanding how AI systems work and their impact on people; enable and guide the development of privacy-respecting AI; support innovative *players* in the AI ecosystem in France and Europe; and audit and control AI systems to protect people. Additionally, the CNIL has strived to provide clarity and guidance for stakeholders by publishing informative materials, institutional positions and guides on the application of GDPR to AI. These efforts are complemented by initiatives such as the sandbox, which aims to support innovative projects in the field of

AI. ^[we] The protection of personal data, in particular, is seen as a fundamental challenge in the development of AI, and the CNIL is determined to ensure that AI systems are developed and implemented in a way that respects the rights and freedoms of citizens.

4.3. Action of the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*)

In January 2023, the Dutch Data Protection Authority announced that it was creating a new Algorithm Monitoring Directorate responsible for monitoring the use of algorithms and coordinating the work of the various agencies that monitor the use of algorithms and artificial intelligence systems in the

context of its regulated sectors. Since then, the authority has strengthened supervision of the use of algorithms that process personal data. The Authority monitors the use of AI algorithms in search of greater transparency and combating arbitrary decisions. Some of the functions of this Directorate include identifying and analyzing cross-sectoral risks, promoting a joint interpretation of standards regarding the processing of personal data by AI systems, and establishing a public registry for AI algorithms in the Netherlands. The Authority may impose fines and other sanctions in accordance with the General Data Protection Regulation.

4.4. Creation of specialized agency - AESIA (Spain)

On August 22, the Council of Ministers approved a Royal Decree establishing AESIA. The agency will be formed jointly by the Spanish Ministry of Finance and Civil Service and the Ministry of Economic Affairs and Digital Transformation. The agency, called AESIA - *Agencia Española de Supervisión de la Inteligencia Artificial*, will be responsible for supervising and controlling AI technologies. In July 2022, a regulatory sandbox had been presented in the country for Spanish companies to test the regulations under discussion within the European Union. At the moment, the sandbox is underway and results are expected to be published in the second half of 2023. Spain also plans to create a "national AI seal" to certify systems that meet European requirements. Spain also has plans to create a public algorithmic social impact observatory and a "risk observation laboratory". AESIA is part of a plan called the National Artificial Intelligence Strategy.

4.5. AIDA Proposal (Canada)

Within the scope of the *Artificial Intelligence and Data Act* - AIDA, the responsible ministerial authority may (or Ministry of Industry), by letter, initiate or demand: i) information and records about an AI system; ii) an audit, carried out by the person responsible for the AI system or by an independent auditor; iii) the adoption of measures to address any issue referred to in an audit report; iv) the cessation of operation of an AI system if the minister has "reasonable grounds" to believe that there is a "serious risk of imminent harm"; v) the publication of information on infractions with a view to encouraging compliance with standards ^[viii].

applicable, except for “confidential commercial information”; and vi) sharing information with other regulators and enforcers, such as the *Privacy Commissioner* or *Canadian Human Rights*

Commission, as appropriate. The ministerial authority may also designate an AI and Data Commissioner, whose role would be to assist and support the minister in meeting the requirements.

4.6. Comparative analysis

The growing importance of artificial intelligence in various sectors of society requires robust and effective governance. **International experiences show that a centralized approach, anchored in a single authority, brings undeniable benefits.** First, a centralized authority has the ability to respond in an agile and coordinated manner to emerging challenges. In a field as dynamic as AI, speed in decision-making can be crucial to preventing or mitigating risks.

Furthermore, a single entity provides a clear and consistent source of guidance for all sectors and agents involved, including developers, companies, public authorities and society in general.

This eliminates ambiguity and ensures that those involved have a uniform understanding of expectations and regulations. Furthermore, this centralization ensures that AI regulation is applied homogeneously across the entire territory, avoiding regional and sectoral disparities that could create gaps or excessive regulatory overlaps. This centralization does not prevent regulators that oversee specific economic sectors from developing their own rules for the use of AI in their contexts, as long as these are aligned with guidelines established by the central authority.

In the Brazilian scenario, the ANPD already stands out as a reference entity in the protection of personal data and guaranteeing the privacy of citizens. AI, with its capabilities for processing and analyzing large volumes of data, aligns directly with ANPD's competencies. This intersection between AI and data protection centralizes AI governance under the umbrella of technical and operational issues, with a continued emphasis on the protection of fundamental rights and the protection of personal data. It also allows the formation of a technical team specialized in both areas, optimizing the application of public resources and avoiding regulatory fragmentation and overlapping of competencies between different regulatory bodies.

Therefore, when considering the trajectory and experience of the ANPD, along with the benefits inherent to a centralized approach, it is clear that the model of centralizing AI governance around the ANPD is a promising strategy.

5. PROPOSED INSTITUTIONAL MODEL

As explained in more detail below, an **institutional model structured in four instances** is proposed, which must act in an articulated and coordinated manner:

- (i) Competent authority (central regulatory body);
- (ii) Executive Branch (development of public policies for the development of AI systems);
- (iii) Sectoral regulatory bodies (acting in coordination with the central regulatory body; and
- (iv) Advisory Council (body of a consultative nature, which ensures the participation of society in the decision-making processes of other bodies).

It is important to emphasize that the preliminary contribution presented here aims only to present the **general contours of the institutional model**, so that **the suggestions for legislative changes**, set out later in this document, **are limited to arts. 32 to 35 of Chapter VIII of PL 2338**, “Supervision and Inspection”.

Therefore, it is highlighted that **other changes would be necessary** to establish and detail the proposed institutional model. From now on, the ANPD makes itself available to the National Congress and other interested parties to discuss this proposal and, if applicable, advance the details of the institutional model.

Competent authority (central regulatory body)

It is proposed that **the ANPD (National Data Protection Authority) be designated as the competent authority, exercising the function of central regulatory body** for

interpretation of the law resulting from PL nº 2,338/2023. The institution will have a special focus on regulation, protection of rights and coordination with sectoral regulatory bodies. The ANPD will be responsible for supervising and monitoring the implementation of the law, protecting the fundamental rights of people affected by AI, promoting and preparing studies on good practices in AI and cooperating with other relevant authorities, based on its existing expertise in institutional functions. similar, as provided for in the LGPD.

It is also worth highlighting the need for PL nº 2338/2023 to contain **an express provision for institutional strengthening of the ANPD**, with a view to enabling the assumption of its new functions. In effect, the ANPD must be characterized by robust institutional independence, with technical, decision-making and administrative autonomy. This independence, partially provided for in the LGPD, is fundamental to ensure that all decisions, guidelines and actions taken by this entity are based on solid and objective technical criteria, always aiming for the best interests of the community. The effective autonomy of the ANPD is a safeguard against undue external interference, whether political, economic or of any other nature, which could compromise the integrity and impartiality of its decisions. To consolidate this autonomy, it is crucial that legislation clearly and expressly establishes the legal prerogatives and powers of the ANPD.

In this context, it is pertinent to follow the model established by the Agencies Law (Law No. 13,848, of June 25, 2019), which outlines the parameters of action and autonomy of regulatory agencies in Brazil. By adopting such guidelines, it will be ensured that the ANPD operates with the necessary autonomy to protect citizens' rights and promote effective regulation of the use of artificial intelligence systems in the country.

In this sense, it is proposed to include in the PL an **express provision that the special autarky regime to which the ANPD is subject is the same as that provided for regulatory agencies and Cade**, under the terms of art. 3rd of Law No. 13,848/2019. Such a rule is necessary because, although it refers to the special autarky regime and ensures technical and decision-making autonomy to the ANPD, the LGPD did not detail these concepts, which, in practice, has raised many doubts and a high degree of legal uncertainty regarding the real extension of ANPD autonomy.

Furthermore, it is proposed that **a new regulatory structure for the ANPD**, covering the necessary adjustments for the implementation of its new functions, be published by the Executive Branch **within 120 days** of the publication of the new law. It is also proposed that the Executive Branch forward a bill to the National Congress creating its own staff for the ANPD within a period of up to 180 days.

Executive power

The Executive Branch, which can be represented by bodies such as the Ministry of Science, Technology and Innovation, the Ministry of Management and Innovation in Public Services and the Ministry of Justice and Public Security, has a crucial role in formulating public policies related to intelligence artificial, which must be expressly provided for in the legislative proposal, following the usual division of roles between regulatory bodies and the Executive Branch. The main instrument for materializing and coordinating public policies related to the development of AI systems in Brazil is the Brazilian Artificial Intelligence Strategy (EBIA), as already provided for in PL 2338. It is **proposed that the PL expressly attributes to the Executive Branch – and not to the competent authority, as provided for in the current wording of art. 32, sole paragraph, II, of the PL – the competence to prepare, manage, update and implement the EBIA**. It will be up to the ANPD to contribute to the process of preparing and implementing, only within the scope of its responsibilities, the forecasts contained in the EBIA. Thus, the Executive Branch will be responsible for the general function of preparing and implementing the EBIA, and it is possible that part of the document establishes, for example, policies, goals and general guidelines that require the implementation of certain specific actions by the ANPD, within the scope of their legal powers.

Sectoral regulatory bodies

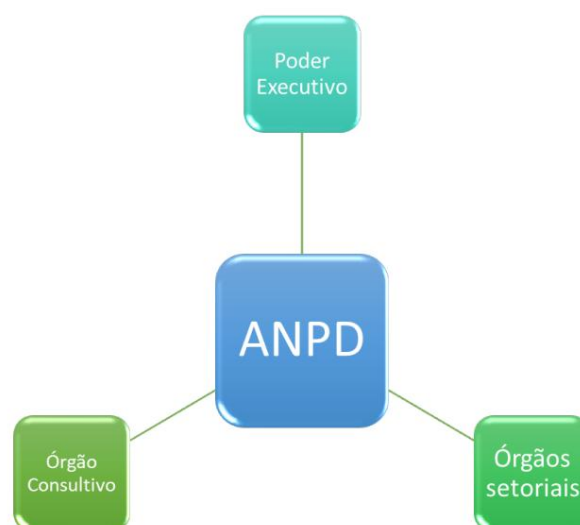
It is proposed that the Sectoral Regulatory Bodies, such as the National Telecommunications Agency - Anatel, the National Health Agency - ANS, the National Civil Aviation Agency - Anac, the National Cinema Agency - Ancine, and the National Petroleum, Natural Gas and Biofuels Agency – ANP, maintain your specific regulatory powers.

In this way, **the sectoral expertise, specific to each regulatory body, is combined with the broader and more general vision of AI systems, which arises from the actions of the ANPD, as a central body.** In order to avoid regulatory overlap and fragmentation, the central body and sectoral bodies must act in a cooperative and coordinated manner, observing the ANPD's general regulations and guidelines regarding the use of AI and, at the same time, the peculiarities and specificities of each sector. PL No. 2,338/2023 already provides for coordination of the activities of the competent authority with these public bodies and entities, ensuring a unified and coordinated approach to the regulation of artificial intelligence in Brazil. It is proposed here to specifically provide for a **“Forum of Sectoral Regulatory Bodies”**, in order to institutionalize and make cooperation between the central body and sectoral bodies permanent. In short, the proposed institutional model aims to guarantee a comprehensive and coordinated approach to the regulation of artificial intelligence in Brazil, aligning with the guidelines and principles established both in the LGPD and in PL nº 2,338/2023.

Consulting board

It is also proposed to **create an Advisory Council, which should operate along the same lines as the National Data Protection Council (CNPD).** This body's main function will be to ensure the active participation of various groups and sectors of society in decisions related to AI, whether in the formulation and execution of public policies or in the actions of the central authority, a function to be performed by the ANPD, as proposed above. In the legislative proposal presented below, **we chose to only mention the creation of the consultative body, without detailing its composition and responsibilities, considering that such details may be carried out at a later date**, as already mentioned.

Proposed institutional model



Preliminary proposal to amend PL nº 2338/2023 Chapter VIII (arts. 32 to 35 of the original wording of the PL)

CHAPTER VIII

SUPERVISION AND INSPECTION

Section I

From the Competent Authority

Art. 32. The competent authority referred to in article 4, V, of this law, is designated as the National Data Protection Authority (ANPD), an agency of a special nature, endowed with technical and decision-making autonomy, with its own assets and with headquarters and jurisdiction in the Federal District.

§ 1 The provisions of art. 3 and, where appropriate, in arts. 14 to 20 of Law No. 13,848, of June 25, 2019.

§ 2 The Executive Branch will provide the necessary resources to ensure the institutional strengthening and expansion of the ANPD's structure and staff to meet the determinations of this Law.

§ 3 To comply with the provisions of § 2 of this article:

I - the new ANPD regulatory structure must be published within a period of up to 120 days from the publication of this Law; It is

II – the bill with the creation of its own staff of ANPD employees will be forwarded by the Executive Branch to the National Congress within a period of up to 180 days from the publication of this Law.

§ 4 Without prejudice to the powers provided for in Law No. 13,709, of August 21, 2018, it is up to the ANPD:

I – ensure the protection of fundamental rights and other rights affected by the use of artificial intelligence systems;

II – contribute to the drafting process and implement, within its sphere of attributions, the Brazilian Artificial Intelligence Strategy together with bodies of related competence;

III – promote and prepare studies on good practices in the development and use of artificial intelligence systems;

IV – encourage the adoption of good practices, including codes of conduct, in the development and use of artificial intelligence systems;

V – promote cooperation actions with authorities to protect and promote the development and use of artificial intelligence systems from other countries, of an international or transnational nature;

VI – issue rules for the regulation of this Law, including on:

a) procedures associated with the exercise of the rights provided for in this Law;

b) procedures and requirements for preparing the algorithmic impact assessment;

c) form and requirements of information to be published on the use of artificial intelligence systems; It is

d) procedures for certifying the development and use of high-risk systems.

VII – coordinate with public regulatory authorities to exercise their powers in specific sectors of economic and governmental activities subject to regulation;

VIII – monitor, independently or in conjunction with other competent public bodies, the disclosure of information provided for in arts. 7th and 43;

IX – monitor and apply sanctions, in case of development or use of artificial intelligence systems in non-compliance with legislation, through an administrative process that ensures adversarial proceedings, broad defense and the right to appeal;

X - request, at any time, from the entities of the public power that develop or use artificial intelligence systems, specific report on the scope, nature of the data and other details of the treatment performed, with the possibility of issuing complementary technical opinion to ensure compliance with this Law;

XI – enter into, at any time, a commitment with artificial intelligence agents to eliminate irregularities, legal uncertainty or contentious situations within the scope of administrative processes, in accordance with the provisions of Decree-Law No. 4,657, of September 4, 1942;

XII – consider petitions against the artificial intelligence system operator, after proven submission of an unresolved complaint within the period established by regulation; It is

XIII – prepare annual reports on its activities.

§ 5º When exercising the duties of the caput, the ANPD may establish different conditions, requirements, communication and dissemination channels for suppliers and operators of artificial intelligence systems qualified as micro or small companies, under the terms of Complementary Law No. 123, of 14 December December 2006, and startups, under the terms of Complementary Law No. 182, of June 1, 2021.

Art. 33. The ANPD will be the central body for applying this Law and establishing standards and guidelines for its implementation.

Art. 34. The ANPD and the public bodies and entities responsible for regulating specific sectors of economic and governmental activity will coordinate their activities, in the corresponding spheres of activity, with a view to ensuring compliance with this Law.

§ 1 The ANPD will maintain the Forum of Sectoral Regulatory Bodies, including through technical cooperation, composed of public administration bodies and entities responsible for regulating specific sectors of economic and governmental activity, in order to facilitate its regulatory, supervisory and sanctioning.

§ 2 In experimental regulatory environments (regulatory sandbox) that involve artificial intelligence systems, conducted by public bodies and entities responsible for regulating specific sectors of economic activity, the ANPD will be informed and will be able to express itself regarding compliance with the purposes and principles of this law .

Art. 35. The regulations and standards published by the ANPD, based on this Law, will be preceded by a public consultation and hearing, as well as regulatory impact analyses, in accordance with art. 55-J, § 2, of Law No. 13,709, of August 21, 2018 and arts. 6 to 12 of Law No. 13,848, of June 25, 2019, as applicable.

Section II

From the Executive Branch and the Artificial Intelligence Advisory Board

Art. 36. It will be the responsibility of the competent body of the Executive Branch to promote the elaboration, updating, management and implementation of the Brazilian Artificial Intelligence Strategy, observing the competences of the ANPD and the sectoral regulatory bodies.

§ 1 The Brazilian Artificial Intelligence Strategy will be prepared with the participation of society, being preceded by a public consultation.

§ 2 The Artificial Intelligence Advisory Council is hereby created, composed of main and substitute representatives from the public sector and society, whose function is to guarantee active and multisectoral participation in the preparation of recommendations regarding the regulation of artificial intelligence in Brazil.

§ 3 The composition and powers of the Artificial Intelligence Advisory Council will be established by Executive Branch Decree.

6. CONCLUSION

As Artificial Intelligence continues to shape and transform various aspects of our society, the need for clear, robust regulation adapted to the Brazilian reality becomes increasingly pressing. AI, with its vast potential and inherent complexities, presents unique challenges that require a well-informed and balanced regulatory approach.

In this context, the National Data Protection Authority emerges as a central institution, not only because of its expertise in data protection, but also because of its fundamental commitment to the rights and interests of Brazilian citizens. ANPD, with its structure, knowledge and technical capacity, is ideally positioned to play a leading role in the regulation of AI in Brazil.

The suggestions presented in this Technical Note aim to strengthen the role of the ANPD as a key authority in AI regulation and ensure that Bill 2338/2023 is aligned with the principles and guidelines established by the General Data Protection Law. These proposals reflect careful analysis and are informed by international regulatory practices and the ANPD's accumulated experience.

We presented to the ANPD Board of Directors the suggestions outlined here, with the suggestion of approval of the text and subsequent forwarding to the Legislative Branch as a contribution to the debates around PL n. 2338/2023. We believe that, by considering and incorporating these recommendations, we will take a significant step towards establishing an AI regulatory framework that is at the same time innovative, protective of citizens' rights and conducive to responsible technological development in Brazil.

7. REFERENCES

[i] Brazil. Law no. 13,709, of 2018. General Personal Data Protection Law. Article 55-J, § 3: The ANPD and the bodies and public entities responsible for regulating specific sectors of economic and governmental activity must coordinate their activities, in the corresponding spheres of activity, with a view to ensuring the fulfillment of their duties with the greatest efficiency and promoting the adequate functioning of the regulated sectors, in accordance with specific legislation, and the processing of personal data, in accordance with this Law. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm. [ii]

— National Data Protection Authority. Artificial Intelligence and Data Protection Regulatory Sandbox in Brazil. October 3, 2023. Available at: <https://www.gov.br/participamaisbrasil/sandbox-regulatorio-de-inteligencia-artificial-e-protecao-de-dados-no-brasil>. [iii]

— European Union. European Parliament Briefing on the Artificial Intelligence Act. June 2023. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI\(2021\)698792_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI(2021)698792_EN.pdf).

[iv] National Commission for Information Technology and Liberties. Artificial intelligence: the action plan of the CNIL. May 16, 2023. Available at: <https://www.cnil.fr/en/artificial-intelligence-action-plan-cnil>. [v]

— National Commission for Information Technology and Liberties. How can we allow Man to keep control? Report on the ethical issues of algorithms and artificial intelligence. 15 of Dezembro of 2017. Available in: <https://www.cnil.fr/fr/comment-permet-lhomme-de-garder-la-main-rapport-sur-les-entreprises-ethiques-des-algorithms-et-of>. [vi]

— National Commission for Information Technology and Liberties. "Sandbox": CNIL launches call for projects on artificial intelligence in public services. July 28, 2023. Available at: <https://www.cnil.fr/en/sandbox-cnil-launches-call-projects-artificial-intelligence-public-services>.

[vii] IAPP "Dutch DPA begins algorithm enforcement work". January 18, 2023. Available at: <https://iapp.org/news/a/dutch-dpa-begins-algorithm-enforcement-work/>.

[viii] Canada. Bill C-27. June 16, 2022. Available at: <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-27/first-reading>.

[ix] Medeiros, Maya; Beatson, Jesse. Bill C-27: Canada's first artificial intelligence legislation has arrived. Norton Rose Fulbright. June 23, 2023. Available at: <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/55b9a0bd/bill-c-27-canadas-first-artificial-intelligence-legislation-has-arrived>.

[x] Federal Senate. Bill no. 2,338, of 2023, which provides for the use of artificial intelligence. Available at: <https://legis.senado.leg.br/sdleg-getter/documento?dm=9347622&ts=1692285382471&disposition=inline>.

To superior consideration.

Brasília, October 17, 2023.

DIEGO CARVALHO MACHADO

Acting Public Servant at ANPD

LUCAS COSTA DOS ANJOS

Acting Public Servant at ANPD

THIAGO GUIMARAES MORAES

Innovation and Research Coordinator

Accordingly. This process is forwarded to the ANPD General Secretariat for information and appropriate measures.

Brasília, October 17, 2023.

MARCELO SANTIAGO GUEDES

General Coordinator of Technology and Research



Document signed electronically by **Lucas Costa dos Anjos, ANPD - National Authority for Data Protection**, on 10/17/2023, at 4:15 pm, according to official Brasília time, based on the § 3 of art. 4th, of [Decree No. 10,543, of November 13, 2020](#).



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