

It makes public the Regulatory Agenda for the 2023-2024 biennium.

THE DIRECTOR-PRESIDENT OF THE NATIONAL DATA PROTECTION AUTHORITY, in the use of the attributions conferred by paragraph 2 of Article 3 of Decree No. 10,474, of 2020,

RECOGNIZING the Regulatory Agenda is a planning TOOL which aggregates the regulatory actions which are considered priorities, and which will be under studies and treatment by the Authority during its validity period;

RECOGNIZING the deliberation taken by the Board of Directors in Deliberative Circuit No. 10/2022; and

RECOGNIZING the file No. 00261.001286/2022-93, ordains:

Art. 1º To make public the Regulatory Agenda of the National Data Protection Authority – ANPD for the 2023-2024 biennium, in the form of the Annex to this Ordinance.

Art. 2º The Regulatory Agenda initiatives for the 2023-2024 biennium are classified in phases, in order of priority:

I – Phase 1 – items for which the regulatory process began during the past 2021-2022 Regulatory Agenda, approved by Ordinance No. 11, of January 27, 2021;

II – Phase 2 – items for which the regulatory process will begin within 1 year;

III – Phase 3 – items for which the regulatory process will begin within 1 year and 6 months;

IV – Phase 4 – items for which the regulatory process will begin within 2 years.

Sole Paragraph. The initiatives referred to in item I of the head provision of this article shall prevail over the other items in the Regulatory Agenda.

Art. 3º ANPD shall consider the themes contained in the Regulatory Agenda for the 2023-2024 biennium as priorities when planning and executing educational actions.

Art. 4º This Ordinance enters into force on the date of its publication.

WALDEMAR GONÇALVES ORTUNHO JUNIOR

ANNEX I

REGULATORY AGENDA – 2023-2024

Item	Initiative	Description	Prioritization
1	Regulation of Dosimetry and Application of Administrative Sanctions	LGPD determines that ANPD shall define, through its own regulation on administrative sanctions for infractions to this Law, the methodologies that will guide the calculation of the base value of fine sanctions and shall objectively present the forms and dosimetries for calculation of the base value of fines, which shall contain a detailed justification of all their elements, demonstrating compliance with the criteria provided for in the law.	Phase 1
2	Data subjects' rights	LGPD establishes data subjects' rights, but several points need regulation, which shall deal with this right, including, but not limited to Articles 9, 18, 20 and 23.	Phase 1
3	Incident reporting and notification deadline specification	According to Article 48 of LGPD, the controller shall notify the national authority and the data subject of the occurrence of a security incident that may result in relevant risk or damage to the data subjects. Although the law establishes minimum criteria, ANPD must provide regulation on some items, such as deadlines, and define the form and the best way of forwarding information.	Phase 1
4	International Transfer of Personal Data	According to item I of Article 33 of LGPD, the international transfer of personal data is only allowed to third countries or international organizations that provide a level of protection of personal data that is adequate to the provisions of the law. In addition to that, art. 34 explains that the level of data protection of the foreign country or international organization shall be evaluated by ANPD. Article 35 of the law also determines that the definition of the content of standard contractual clauses, among others, will be conducted by ANPD. Thus, it is necessary to regulate Articles 33, 34 and 35 of LGPD, as well as other topics contemplated by the articles not mentioned in this text.	Phase 1
5	Data Protection Impact Assessment	According to Article 55-J, item XIII, ANPD is responsible for issuing regulations and procedures on the protection of personal data and privacy, as well as on data protection impact assessment reports for cases where the processing represents a high risk to the guarantee of the general principles of personal data protection	Phase 1
6	Data Protection Officer	Pursuant to Article 41, paragraph 3 of LGPD, ANPD may establish supplementary rules on the definition and duties of the data protection officer, including cases in which the appointment of such person may be waived, according to the nature and size of the entity or the volume of data processing operations.	Phase 1
7	Legal basis for processing personal data	Document guiding the public on the legal basis and hypotheses for the application of LGPD on several topics, including the legal basis described in art. 7º, but not restricted to it.	Phase 1
8	Definition of high risk and large scale	Legal obligation established in paragraph 3 of Article 4 of the Regulation for the application of Law 13,709/2018 – Brazilian Data Protection Law (LGPD) – for small-scale data processing agents, approved by Resolution	Phase 1

		CD/ANPD No. 2, of January 27, 2022, provided criteria for defining high-risk data processing for data subject.	
9	Sensitive Personal Data – Religious Organizations	Document with the purpose of disseminating the basic procedures for adequacy to the provisions of LGPD by religious organizations.	Phase 1
10	Use of personal data for academic purposes and for studies by research bodies	Document with the purpose of providing processing agents with recommendations and guidelines which may encourage the adoption of good practices and support the processing of personal data for academic purposes and for studies and researches compatible with LGPD's provisions.	Phase 1
11	Anonymization and pseudonymization	Document with the objective of guiding and clarifying the use of the anonymization and pseudonymization techniques as provided in LGPD.	Phase 1
12	Regulation of the provisions of Article 62 of LGPD	Article 62 of LGPD determines that ANPD shall enact specific regulations for accessing data processed by the Federal Government for compliance with the provisions of paragraph 2 of Article 9 of Law No. 9,394, of December 20, 1996 (Brazilian National Education Basis and Guidelines Act – LDB), and those relating to the National Higher Education Evaluation System (Sinaes), as provided for in Law No. 10,861, of April 14, 2004.	Phase 1
13	Data sharing by government authorities	Chapter IV of LGPD provides regulations for the processing of personal data by government authorities. The law determines that ANPD may provide for the forms of disclosing information on data processing operations, as well as that contracts and agreements established between government authorities and private entities which have access to personal data included in databases shall be informed to ANPD. Study aims at the operationalization of Articles 26 and 27 of LGPD, which deal with data sharing between government authorities and legal entities of private law, especially regarding the procedures to be adopted and the information to be forwarded to ANPD to comply with the provisions of the Law.	Phase 2
14	Processing of children's and adolescents' personal data	ANPD has prepared a Preliminary Study on the subject, which aimed at analyzing the possible legal basis applicable to the processing of children's and adolescents' personal data. However, the study did not intend to be exhaustive, due to scope and time limitations, which sought to promote public discussion and collect contributions from society, in order to establish more conclusive interpretations and guidelines later. It should be emphasized that the possible techniques for measuring consent or for measuring the age of internet application users have not been considered. In addition, there is a need to analyze the impacts of digital platforms and games on the Internet on protecting children's and adolescents' personal data. Although relevant for the processing of children's and adolescents' personal data, the discussion on these related topics requires a broader approach, considering other contexts and technical and legal aspects.	Phase 2
15	Sensitive Personal Data – Biometric Data	Biometrics collection is fundamentally important to prevent fraud and a relevant safeguard for the data	Phase 3

		subject's safety. Despite the subject importance, LGPD has not fully addressed the needs for discipline on it. In this sense, ANPD's intervention becomes necessary, either through regulation or guidance documents on the contexts in which the collection of sensitive data would be legitimate.	
16	Technical and administrative security measures (including minimum technical standards)	Pursuant to Article 46 of LGPD, processing agents shall adopt technical and administrative security measures able to protect the personal data from unauthorized accesses and accidental or unlawful situations of destruction, loss, alteration, communication, or any form of improper or unlawful processing. Paragraph 1 of the article establishes that ANPD may provide minimum technical standards to make the provisions in the main provision of this article applicable, considering the nature of the processed information, the specific characteristics of the processing, and the current state of technology, especially in the case of sensitive personal data, as well as the principles set forth in the law.	Phase 3
17	Artificial Intelligence	Beyond the legal determination to regulate the provisions of LGPD, particularly the one in Article 20, which deals with the data subject's right to request review of automated decisions, ANPD can better address the issue through guidance documents, such as guides and technical studies, since the subject is being widely used by processing agents, given data subject's vulnerability, who does not have advanced knowledge on the subject. It is essential that ANPD study and monitor the topic from the perspective of personal data protection and application of LGPD. Such guidelines will serve as a baseline for the development of other rules which may be necessary for the discipline of AI system.	Phase 3
18	Conduct Adjustment Term – TAC	In compliance with the provisions in Article 55-J, item XVII of LGPD, and in Article 44 of Resolution CD/ANPD No. 1, of October 28, 2021, the Conduct Adjustment Term – TAC is an instrument which is part of the Enforcement Process and the Administrative Sanctioning Process of ANPD, allowing the interested agent to present a proposal of agreement as an alternative to the regular progress of the sanctioning process.	Phase 4
19	Guidelines for the National Policy for the Protection of Personal Data and Privacy	In view of the legal determination established in Article 55-J, item III of LGPD, for the elaboration of guidelines for the National Policy for the Protection of Personal Data and Privacy, the initiative is necessary to direct the actions of all the actors involved in the data protection ecosystem, including ANPD. The Policy shall consider the other published public policies, such as the Digital Strategy, the National IoT Plan, among others.	Phase 4
20	Regulation of criteria for acknowledging and disseminating rules on good practices and governance	Article 50 of LGPD provides that controllers and processors, within the scope of their duties for personal data processing, individually or by associations, may formulate rules for good practices and governance that provide for organization conditions, operational arrangements, procedures, including complaints and requests from data subjects, security rules, technical standards, specific obligations for those involved in the processing, educational activities, internal mechanisms	Phase 4

		<p>for supervision and risk mitigation, and other aspects relating to personal data processing. When establishing rules of good practices, the controller and the processor shall consider the nature, scope and purpose, regarding the processing and the data, as well as the probability and severity of the risks and benefits arising from the processing of the data subject's data. LGPD determines that rules on good practices and governance shall be published and updated periodically and may be acknowledged and disseminated by the national authority.</p>	
--	--	--	--