

National Data Protection Commission

OPINION/2023/30

I. Request

1. On March 8, 2023, the Commission for Constitutional Affairs, Rights, Freedoms and Guarantees requested the National Data Protection Commission (CNPd) to issue an opinion on Bill 625/XV/1 (PAN) that “ Reinforces the protection of whistleblowers of environmental crimes, amending Law No. 93/2021, of December 20”.

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with authoritative powers for the control of the processing of personal data, conferred by articles 57, paragraph 1, letter c); 58, no. 3, letter o); 36, no. 4, all of Regulation (EU) 2016/679, of April 27, 2016 - General Regulation on Data Protection (hereinafter RGPD), in conjunction with the provisions of articles 3; 4th No. 2; 6, n.º 1, letter a), all of Law n.º 58/2019, of August 8, which implements the GDPR in the internal legal order.

II. Analysis

3. Bill 625/XV/1 (PAN) (hereinafter Bill) aims to amend Law No. 93/2021, of December 20, which established the general regime for the protection of whistleblowers of infringements, transposing Directive (EU) 2019/1937 on the protection of persons who report violations of EU law.

4. Its explanatory statement begins by mentioning that "The whistleblowers have a fundamental role, since, through the exercise of a right and a civic duty, they ensure the safeguarding of the public interest, namely by exposing cases of corruption , environmental crimes, violations of human rights, violations of legislation regarding animal protection and welfare and other violations and illegalities".

5. Further on and after stating that “This proposal is intended, in particular, to reinforce the protection of environmental whistleblowers”, it was specified that “this initiative provides for a set of three major proposals that aim to deepen the guarantees of protection for whistleblowers”, which was explained later, in the terms indicated below.

6. "The first amendment aims to ensure the broadening of the scope of application of the general regime for the protection of whistleblowers of infractions, under the terms recommended by the Superior Council of the Public Ministry, in September

2021, and claimed by the 21 non-governmental organizations".

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7. "The second aims to guarantee the prediction of a broad concept of whistleblower that includes people who are not professionally connected to the entity being accused".

8. "The third and final proposal intends to enshrine an anti-SLAPP mechanism, which protects the whistleblower against retaliation in the judicial sphere" - SLAPP is the acronym of strategic lawsuit against public participation, commonly known as "intimidating actions" that aim to prevent such complaints.

9. Keeping this expository alignment, the Bill focuses on articles 2.º (Scope of application), 5.º (Complainant), expanding its concept (n.º 1), 6.º (Conditions of protection), extending its protection (n.º 4), 21.º (Prohibition of retaliation), in different contexts (n.º 2), extending the cases of relative legal presumption (until proven to the contrary) of retaliation (n.º 7), 24th (Liability of the complainant), the latter being part of the so-called "judicial protection" measures, more precisely in the sense of excluding the illegality based on such complaints, 27th (Indemnities and fines), extending the list of very serious infringements (paragraph e) of paragraph 1).

10. As a mere note, we cannot fail to mention that although the present Bill is epigraphed "Reforçar a proteção de whistleblowers of environmental crimes", the fact is that it goes beyond the criminal nature of such illicit acts, projecting for the corresponding administrative offences, covering the entire scope of application of the aforementioned Law No. 93/2021, as defined in its article 2.

11. Thus, this legislative amendment aims to reinforce the protection of whistleblowers covered by the aforementioned Law No. 93/2021, which involves preserving their anonymity, through internal and external reporting channels, as well as expanding the legal guarantee mechanisms for whistleblowers.

12. ACNPD, at the time of the Proposal for Law 91/XIV/2.a (Gov.), which gave rise to the aforementioned Law No. 93/2021, of

December 20, issued its Opinion/2021/76, accessible at <https://www.cnpd.pt/decisooes/pareres/>.

13. This opinion focused essentially on considering the extent of the professional secrecy of the Data Protection Officer, on the processing of personal data collected and on the first assumption of the preliminary filing of the external complaint.

14. The pre-legislative context of Opinion/2021/76 is therefore different from the present Opinion, especially since we are dealing with consolidated legislation.

15. Thus, with regard to the proposed legislative amendments, from the perspective of the protection of personal data, there is no obstacle or consideration that should be formulated.

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III. Conclusion

16. Under the terms and grounds set out above, the CNPD issues this opinion.

Lisbon, March 23, 2023

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