

Brief overview on Data Protection in Europe and in Brazil

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Agenda

1. Why should we talk about data protection?
1. European legislation: chronological outline
3. The new General Data Protection Regulation of European Union (GDPR)
4. Legal framework of Data Protection in Brazil: the Lei Geral de Protecao de Dados (LGPD) and the Provisional Measure n. 869/18

Why should we talk about data protection?

- Internet of Things
- Big Data
- Artificial Intelligence

EU and German Legislation

Chronological outline

- **1970:** Hesse approves the worldwide first data protection law
- **1977:** the German Federal Data Protection Act follows
- **1983:** *Volkszählungsurteil* - the census decision is rendered by the German Federal Constitutional Court
- **1995:** European Data Protection Directive 1995/46/EG is approved
- **2016:** the GDPR (EUDSGVO) came into force on 25th April
- **2018:** the GDPR became applicable on 25th May

But why changing from Directive 95/46 to GDPR?

- Different implementation by Member States, which led to inconsistencies, complexity and legal uncertainty
- One-stop-shop
- The same rules for all companies - regardless of where they are established
- Modernizing the legislation

General Data Protection Regulation

Highlighting points:

- Scope of geographical application (art. 3)
- Consent and *opt-in*
- Pseudonymization
- Privacy by design and by default
- Data Protection Officer

Does the GDPR matters to the rest of the world?

→ Extraterritorial application of the GDPR (art. 3)

„1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

a) **the offering of goods or services**, irrespective of whether a payment of the data subject is required, **to such data subjects in the Union**; or

b) **the monitoring** of their behaviour as far as their behaviour takes place within the Union.“

But where does Brazil stand in Data Protection?

- Marco Civil da Internet
- The LGPD (Lei Geral de Protecao de Dados)
- The Provisional Measure n. 869/18

LGPD (Law # 13.709/2018)

- Adopted in August 2018; will come into force in 15th August 2020.
- Material scope: LGPD applies to all processing activities carried out by a natural person or legal entity with regard to personal data.
- Territorial scope: when processing is in Brazil or abroad when related to:
 - a) offering or rendering goods or services from data subjects located in Brazil or
 - b) data collected in Brazil.

When processing is allowed?

Art. 7

- 1) Compliance with legal or regulatory obligations;
- 2) Execution of public policies;
- 3) Conducting studies by research entities;
- 4) Execution of contracts;
- 5) Exercise of rights in judicial or administrative proceedings;
- 6) Protection of the life or physical safety of the data subject or third parties;
- 7) Health protection;
- 8) Legitimate interest of the Controller;
- 9) Protection of credit;
- 10) **Consent.**

Data subject rights

- Access to personal data
- Correction of personal data
- Elimination of personal data
- Revocation of consent
- Data portability

Sanctions

- Simple fine of up to 2% of the company's revenue, with a maximum ceiling of 50 million BRL per infringement
- Daily fine up to 50 million BRL per infringement
- Elimination of the personal data related to the infringement

Data Protection Authority

Art. 55-A

- Previously vetoed in the LGPD, then created by Provisional Measure n. 869/18
- It will be a body linked to the President and not a special agency as previously planned.
- Technical autonomy;

Data Protection Authority

Art. 55-J

It is responsible for:

- issuance of rules related to data protection;
- fiscalization of the compliance of the law;
- application of sanctions.

Comparative table between the GDPR and LGPD

	LDPD	GDPR
Definition of personal data	Art. 5, I	Art. 4, 1
Definition of sensitive data	Art. 5, II Sensitive data	Art. 9 Special categories of personal data
Consent	Art. 7, I c/w Art. 8	Art. 7
Consent related to children	Art. 14	Art. 8
Processing of sensitive data	Art. 11	Art. 9

Comparative table between the GDPR and LGPD

	LDPD	GDPR
Right to access	Art. 18, II	Art. 15
Right of correction	Art. 18, III	Art. 16
Data portability	Art. 18, V	Art. 20
Right of elimination	Art. 18, VI	Art. 17 (right to be forgotten)
Right to object	Art. 18, §2	Art. 21
Processing of sensitive data	Art. 11	Art. 9

Comparative table between the GDPR and LGPD

	LDPD	GDPR
International transfer of personal data	Art. 33-36	Art. 45-50
Administrative sanctions	Art. 52	Art. 84
Data protection Authority	Art. 55-A	Art. 51 supervisory authorities Art. 68 European Data Protection Board

THANK YOU!

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