Privacy Series

11 ANPD AND ITS DIRECTIVES



This is the eleventh chapter of the Data Privacy Series. Click here to access the chapter 10.



In 2023, the Brazilian General Data Protection Law (Law No. 13,709/2018 or "LGPD") celebrates 5 years of its publication - now also including the possibility of the application of administrative sanctions by the ANPD since August 2021. The Brazilian National Data Protection Authority ("ANPD") has been active in fostering discussions and disseminating concepts, practices and principles of privacy and data protection, through the publication of several materials for awareness and regulation of the LGPD since its creation.

Veirano Advogados has been following and participating in discussions regarding these issues. For this reason, our Data Protection & Privacy team has prepared the Privacy Series, in which we will periodically publish on different topics related to privacy, bringing not only LGPD concepts, but also ANPD publications on the subject, relevant considerations, among other contents.



The National Data Protection Authority (ANPD) is the regulatory body responsible for the enforcement of data protection rules in Brazil. Also, the ANPD was originally created as part of the Federal Public Administration, linked to the Brazilian Federal Government. However, in October 2022, the ANPD was transformed into an independent agency, ensuring technical and decision-making autonomy for it.

This change in the legal nature of the ANPD is beneficial to companies that transfer data to the European Union (EU), since the General Data Protection Regulation (GDPR) provides the independence of its supervisory authorities from its government, as one of the requirements for considering a country at an adequate level of Being considered a country holding adequate protection on the European Commission's list gives companies operating in Brazil a greater ease in the international data transfer scenario with the EU.

Regulation of Specific LGPD Topics

Among the resolutions already issued by the ANPD we highlight the following:

Resolution CD/ANPD No. 1/2021

This resolution aims to establish the procedures, inherent to the inspection process, which include the activities of monitoring, guidance and preventive action, and the rules to be observed in the administrative sanctioning process by the ANPD, including provisions related to the interactions between the ANPD units and the regulated agents.

Resolution CD/ANPD No. 2/2022

Regulates the application of the LGPD for micro and small enterprises, as well as startups or innovation companies, pursuant to Article 55-J, item XVIII, of the LGPD.

Seeking to facilitate the compliance to the LGPD by **small-sized processing agents**, the Regulation provides for a certain level of flexibility in relation to the provisions of the LGPD. Such flexibilities are related to the

possibility of adopting simplified and differentiated procedures, facilitating the compliance of this group with the LGPD and contributing to the dissemination of the culture of personal data protection. For example, the Regulation establishes, among other measures:

- The granting of double time limit to respond to requests from data subjects regarding the processing of their personal data;
- The non-obligation of indicating the data protection officer, as required in Article 41 of the LGPD; and
- The possibility of keeping a record of personal data processing operations (Article 37 of the LGPD) in a simplified form, in a model to be provided by the ANPD.



Regarding this last topic, the ANPD recently has published the model for the simplified registration of personal data processing operations to be used by these agents. The simplified model contains only the fields considered essential so that the General Coordination of Inspection of the ANPD, if necessary, receives basic information from these agents for the exercise of inspection activities.

Resolution CD/ANPD No. 4/2023

Approves the Regulation on Dosimetry and Application of Administrative Penalties.

The Dosimetry Regulation aims to establish parameters and criteria for the application of penalties provided in articles 52 and 53 of the LGPD, and also amends and brings new provisions for the administrative sanctioning process provided in the Regulation of the Inspection Process and the Administrative Sanctioning Process, established by Resolution CD/ANPD No. 1, providing greater legal certainty and transparency to the parties involved.

Among the most relevant points of the Regulation are:

- The criteria for classifying infractions as light, medium or serious, as well as the parameters for applying pecuniary and non-pecuniary sanctions based on such criteria;

- The methodology for defining the basic amount of the fines, ensuring proportionality between the seriousness of the agent's conduct and the sanction to be applied; and
- The concession of an opportunity, during the investigation phase, to the regulatory agency or entity to which the controller is subject to manifest itself on possible consequences of the imposition of sanctions for the exercise of regulated activities developed by the controller, especially in the provision of public services.

Statement CD/ANPD nº 1/2023

In addition to the resolutions highlighted above, the ANPD issued the Statement No. 1 regarding the processing of data on children and adolescents, which establishes that the processing of personal data on children and adolescents may be carried out based on the legal hypotheses provided for in art. 7 or in art. 11 of the LGPD (and not only based on the consent), provided that their best interest prevails, to be evaluated in the specific case.

ANPD Guidelines

On its official website, the ANPD has published several guidelines and technical documents covering a variety of specific data protection topics.

The documents address a range of topics, such as: Guidance on Cookies and Personal Data Protection, Guidance on Processing of Personal Data by Public Authorities, Guidance on the Application of the General Law on Personal Data Protection (LGPD) by Data Processors in the Electoral Context, Guidance on Information Security for Small Data Processors, Guidance on Definitions for Data Processors and Personal Data and the Officer in Charge, and the Data Protection and Data Leakage Fascicles, among others.



The **Guidelines on Cookies and Personal Data Protection** provides an overview on the use of cookies, in addition to providing guidance to processing agents and the best practices on the matter, especially regarding the obtention of consent and transparency to data subjects. In this sense, the guideline addresses the definition and categories of cookies, principles and legal basis applicable to the processing of personal data using cookies, as well as recommendations on instruments to ensure compliance with the LGPD, including banners and cookie policies.



The **Information Security Guidance for Small Processing Agents** has a orientation character and aims to present aspects related to information security applicable to micro-enterprises, small businesses, startups, and innovation companies, as well as assisting them in the implementation of technical and administrative measures to protect personal data.

In addition to the materials mentioned above, the ANPD also signed several **Technical Cooperation Agreements (ACT)**, which allowed the ANPD to form partnerships with public administration and civil society organizations. Among these agreements, are:

- ACT signed with the National Consumer Secretariat - Senacon, which seeks to promote joint actions on matters of mutual interest, such as personal data protection and consumer protection;
- ACT signed with the Administrative Council for Economic Defense - CADE, which aims at continuous cooperation and dialogue in order to promote actions to be adopted by ANPD and CADE when violations of the economic order are verified, as well as cases of economic concentration involving personal data;
- ACT signed with the Ponto BR Information and Coordination Center - NIC.br, which establishes an exchange of information between the bodies and provides for joint actions on matters of mutual interest, such as protection of personal data, information security, privacy in networks and technology;
- ACT signed with the State Court of Auditors - TCE, which aims to align LGPD guidelines with electoral laws, with the production of educational material, allowing a conciliation between the electoral scenario and data protection; and
- ACT signed with the Comptroller General of the Union - CGU, which seeks to achieve common objectives between the bodies, allowing the promotion, for example, of actions of mutual institutional support, exchange of information on inspection processes and preparation of norms.

Seeking to confer greater predictability, publicity, transparency and efficiency to the Authority's regulatory process AND has published the ANPD's Regulatory Agenda for 2023/2024 was approved, indicating the list of 20 themes that have already been regulated and that will still be regulated in the biennium:

Phase 1 — **Subjects whose regulatory process was initiated during the term of the Regulatory Agenda for the 2021/2022 biennium**

- Regulation of dosimetry and application of administrative sanctions;
- Rights of personal data subjects;
- Reporting of incidents and specification of the notification deadline;
- International transfer of personal data;
- Personal data protection impact report;
- Personal Data Protection Officer;
- Legal hypotheses for processing personal data;
- Definition of high risk and large scale;
- Sensitive personal data - religious organizations;
- Use of personal data for academic purposes and for carrying out studies by research organizations;
- Anonymization and pseudonymization; and
- Regulation of the provisions of article 62 of the LGPD.

Phase 2 — **Subjects that will start within 1 year**

- Data Sharing by Public Authorities;
- Processing of personal data of children and adolescents;
- Guidelines for the national policy on personal data and privacy protection; and
- Regulation of criteria for recognition and disclosure of good practice and governance rules.

Phase 3 — **Subjects whose start of the process will take place in up to 1 year and 6 months**

- Sensitive personal data - biometric data;
- Security, technical and administrative measures (including minimum technical security standards;
- Artificial Intelligence.

Phase 4 — **Issues where the process will begin within 2 years**

- Term of conduct adjustment - TAC.



The Veirano Experience has a holistic, multidisciplinary, and business-oriented approach. In order to cover all the needs related to Compliance with LGPD, our Data Protection & Privacy team have developed several project formats, which comprise different scopes of work and meet specific demands of each client, whether national or international:

1. Full Compliance

With the performance of a multidisciplinary team, this project is aimed for clients whose goal is to identify and assess all ongoing processing activities within the company and based on that, identify vulnerabilities and structure an action plan for the creation of an effective privacy and data protection program based on legal, procedural, information security, and corporate governance pillars.

2. DPO as a Service

In this model, we take on the role of Data Protection Officer (DPO) on behalf of the client. To this end, we allocate a professional to perform the activities of managing and monitoring the client's data protection and privacy program.

3. M&A Legal Assistance

Designed to assist clients in the legal due diligence of merger and acquisition transactions, in order to identify relevant legal issues (red flags) and mitigate potential risks related to data protection and personal data security issues of the target company.

4. LGPD Pocket

A “pocket” advisory service for the adequacy of the activities and/or products developed by the company, regardless of its size or field of business, considering a reduced number of deliverables.

5. LGPD on Demand

LGPD On Demand is aimed at organizations that wish to have multidisciplinary advisory service on legal, information security, and corporate governance issues, with specific and timely action related to the protection of personal data.

6. LGPD Legal Helpdesk

The Helpdesk is designed to assist clients with LGPD legal consultations and demands within a monthly package of hours, either before, during, or after the initial compliance process.

7. Task Force For Security Incident Assessment And Reporting (VA Cybersecurity)

Specific and multidisciplinary legal advice in aspects related to the suspicion or occurrence of a security incident, in accordance with the most updated instructions from the ANPD and other applicable laws and regulations.

8. Representation in Administrative and Judicial Actions Involving Data Protection

Representation of clients in any administrative and/or judicial actions or potential actions involving data protection.

9. Analysis of Administrative and Judicial Decisions on Data Protection Matters

Periodic monitoring of decisions rendered in judicial and administrative proceedings involving the company or not, in order to present the authorities’ understanding and the impacts for the company or economic sector to the client in a summarized format.

10. Development and Updating of a Data Protection Impact Report

The ANPD may request from the controller to prepare a personal data protection impact report ("RIPD" or DPIA). Our team has expertise on the subject and can assist the company with the preparation and updating of the RIPD.

11. Development of Workshops

Development and application of training about the main concepts related to privacy and data protection to train its employees.

12. Playbook for Negotiating Commercial Contracts

Creation of playbooks for the negotiation of commercial contracts, to facilitate and speed up internal processes of commercial, technical, and legal teams.

13. Handbook to Reply the Data Subjetcs

Development of materials to assist the companies in prompt answering the data subjects' requests, as well as in the procedure to be followed by the company when answering the data subject, according to the business model developed by the company.

14. International Data Transfer

We help clients to understand the context of the international transfer, adapt it to the applicable legal basis, assess data localization requirements, add contracts, draft and review intra-group data sharing agreements, and generally respond to queries related to the harmonization of foreign with Brazilian regulations.

15. Privacy and Data Protection Auditing

We conduct audits to evaluate the company's level of maturity, presenting recommendations for risk mitigation.

16. Development and Review of Documents Pursuant to the Financial Sector

Our team has expertise in drafting security policies in accordance with the Central Bank's specific information security regulations, and in answering questions on the subject.

We are at your disposal in case of any questions or in the need of any additional information.



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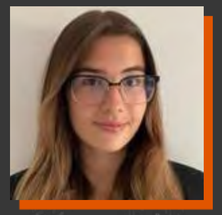
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This material was last updated on June _, 2023 and published on June _, 2023.
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