



September 9, 2020

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Office of the President

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Re.: LGPD Implementation and International Data Transfers

BSA | The Software Alliance (BSA)¹ and the Global Data Alliance (GDA)² represent companies committed to high standards of data privacy and security. BSA and GDA support the Government of Brazil's ongoing efforts to implement the Personal Data Protection Law (LGPD), including through structuring the National Data Protection Authority (ANPD). We understand and appreciate that the important privacy protections in the LGPD are applicable on its effective date, even if administrative enforcement will not happen until August 1st, 2021.

We are aware that additional steps are still needed to ensure the ANPD's leadership is in place, and that the ANPD is staffed with professionals with the appropriate background so that it will be able to issue important

¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 30 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy. BSA's members include: Adobe, Atlassian, Autodesk, Bentley Systems, Box, Cadence, CNC/Mastercam, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

² The Global Data Alliance (globaldataalliance.org) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members include BSA members and American Express, Amgen, AT&T, Citi, ITB360, LEGO, Mastercard, Panasonic, Pfizer, Roche, United Airlines, Verizon, Visa, and WD-40 Company. These companies are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance.

regulations necessary for the proper implementation of the LGPD. One important provision that requires implementation by the ANPD is the one addressing international data flows. To ensure legal certainty, BSA and GDA respectfully request that, until such regulations are in place, guidance be issued confirming that companies may continue to responsibly transfer data internationally based on global best practices, such as contractual provisions ensuring protection of the data wherever it is transferred to, that are consistent with the overall LGPD objectives.

BSA and GDA members rely on the ability to transfer data responsibly around the world to create jobs and make local industries more competitive. Cross-border data transfers power innovation and growth across the globe and all sectors of the economy — from manufacturing and farming to local start-ups and service providers. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes, in every country, to create new kinds of jobs, boost efficiency, drive quality, and improve output.

It is extremely important for Brazil's competitiveness that the LGPD provision regulating international data transfers (article 33) includes flexible transfer mechanisms. The majority of the mechanisms listed on article 33 - which companies most often rely on to transfer data internationally – require action by the ANPD. Some of those mechanisms mirror international best practices, which BSA and GDA companies already follow. Although some adjustments may be necessary once the ANPD approves the details for the use of those mechanisms, until that occurs it is important that there is legal certainty that data transfers can continue based on best practice transfer mechanisms.

The fact that the LGPD will soon be in force without all the necessary implementing regulations in place require a consistent approach by all Federal Agencies or Bodies that could enforce the law. This approach should aim at promoting legal certainty. It is, therefore, extremely important the guidance herein requested be issued as soon as possible.

We look forward to continuing participating in relevant discussions with the Government of Brazil as efforts to implement the LGPD progress.

Sincerely,

BSA | The Software Alliance

Global Data Alliance