

ANALYSIS

Brazil Rolls Out Long-Awaited Data Protection Sanctions

Lawyers expect a wave of demand for advice from companies that need to strengthen their internal safeguards in order to avoid fines and restrictions on handling personal information

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Privacy



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Brazil has outlined possible penalties for companies that violate its General Law for the Protection of Personal Data (LGPD), unleashing a wave of work for Brazilian lawyers.

The much-awaited sanctions range from a warning or fine to a partial or total ban on carrying out activities related to data processing, with regulators promising to take mitigating and aggravating factors into account as they calculate fines.

“We expect that now, with the publication of the so-called dosimetry regulation, the LGPD compliance work will increase, considering that administrative sanctions can effectively be imposed,” said Paulo Lilla, a partner in the technology, data protection and intellectual property practice at Lefosse, a large Brazilian law firm.



Paolo Lilla

“Companies and organizations still failing to comply with LGPD should strive to do so as soon as possible. They should also revise and update their data protection governance programs to ensure they are up-to-date,” added Lilla.

In addition to being Latin America’s largest economy, Brazil is also a prominent target for cybercriminals. Cyber attacks that have been reported in recent years include one against the Brazilian unit of Norwegian engineering giant Aker Solutions, and another against Brazilian retailer Fast Shop, which suffered a ransomware hit in 2022 that briefly debilitated its online store.



Patricia Helena Marta Martins

Brazil's data privacy regulations apply mostly to large companies that either control or process personal information, impacting at least 12,000 enterprises in Brazil that employ 250 or more people.

Financial penalties consist of one-time fines of up to 2% of the company's revenue, limited per breach to 50 million Brazilian reais, or just under US\$1 million. Daily fines of nearly \$1 million may also be imposed.

Patricia Helena Marta Martins, a partner in TozziniFreire's technology & innovation and cybersecurity & data privacy practice groups, noted that historically, Brazilian authorities have often turned to fines when penalizing companies.

She also said that the rules and penalties laid out by the Brazilian Data Protection Authority are similar to those detailed by other Brazilian agencies.

Another GDPR?

Comparisons have been drawn between Brazil's data protection efforts and the enforcement of Europe's General Data Protection Regulation (GDPR), which took effect in 2018.

Companies such as [Amazon](#) have faced gargantuan fines in the EU for failings in processing personal data. In 2022 alone, European data protection authorities issued GDPR-related fines worth nearly €3 billion.

The Brazilian Data Protection Authority, known by the acronym ANPD, already reports having received more than 1,000 complaints of alleged violations of the General Law for the Protection of Personal Data, and 287 notices of data breaches.

The data protection authority has detected inadequate safeguards of personal information in eight of those cases.

Fabio Kujawski, a partner in the data protection and cybersecurity practice at Mattos Filho, says the best way for companies to avoid sanctions in Brazil "will be to maintain an updated governance program for compliance with the data protection

legislation, including by documenting the measures adopted to comply with the accountability principle.”

Before applying a penalty, the authority will consider details such as the seriousness of the offense, the type of personal data that was compromised, the offending party’s good faith efforts to adopt data protection best practices, and the offender’s speed in correcting infringements.

The Brazilian Data Protection Authority has also promised to start with more minor penalties, such as warnings, before escalating to the maximum of blocking a company’s ability to process data.

“Instead of seeking punishment first, the authority will work with processing agents towards ensuring compliance with the LGPD, as well as preventing risks and damages to data subjects. Therefore, companies willing to cooperate with the ANPD and seek compliance with the law at the beginning are likely to be off the hook,” explains Lilla.

“Sanctions will be enforced as a last resource or when needed to prevent risks and damages to data subjects.”

Brazilian lawyers have seen waves of compliance work related to the data protection law since it was first enacted in 2018, which prompted some companies to start adapting their internal procedures.

Another wave of work came in 2020, when the law took effect. Still, the regulation lacked teeth until the criteria for sanctions were published this past February.