

Data Privacy Latest News

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On January 28th the Data Privacy Day is celebrated around the world. The date was set based on a decision of the Committee of Ministers of the Council of Europe, referencing the opening for signature of the EU Convention No. 108/1981, which aimed at defending the freedom, private life and data protection of individuals.

The date is especially relevant in Brazil this year: in August 15th, the Law No. 13,709/2018 (Brazilian General Data Protection Regulation – “LGPD”) will enter into force. This new regulation impacts not only individuals, as data subjects, but also companies, which can be considered controllers or processors of personal data.

Considering the current scenario in Brazil, where there is a Bill of Law willing to postpone the validity of the LGPD, as well as the absence of an operational National Data Protection Authority, the main recommendation is that companies get ready to comply with the basic requirements brought by the LGPD, making sure to respect the rights and obligations set forth therein.

Measures taken according to European good practices are also recommendable. Earlier this month, the United Kingdom’s Information Commissioner’s Office, independent entity responsible for protecting personal data in UK and an important reference for Brazilian Congress when dealing with data protection matters, released the first draft of the “Direct Marketing Code of Practice”. Relying on the Regulation (EU) n. 2016/679, known as the General Data Protection Regulation, the material is thorough and brings important aspects:

- consent and legitimate interest should be the main legal basis used for direct marketing;
- data processing operations should respect the principles of transparency, purpose and accountability;
- profiling, data enrichment and the use of new technologies should be made clear to data subjects;
- data subjects’ rights should be respected in all phases of the data processing;
- to better understand direct marketing vis à vis the GDPR, the key factor should be the phrasing, tone and context.

The document is a code of best practices and recommendations but is not binding. However, despite bringing considerations already suspected by those familiar with data protection regulations, it represents guidelines created by a relevant DPA and, thus reference thereto becomes important for companies from the advertising and marketing business and also for companies which have such practices internally, and process personal data subject to the LGPD.

If you want to receive more information about the LGPD, strategies for compliance or trends in the Brazilian and the international scenario, our team specialized in Digital Law is available at digital@kasznarleonardos.com.