

Brazil approves Provisional Measure about personal data

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Last Friday, President Jair Bolsonaro approved the Provisional Measure no. 954 (“MP 954”) that determines the sharing of consumers’ data by telecommunication companies with the IBGE Foundation (Brazilian Institute of Geography and Statistics Foundation - IBGE) aiming at conducting remote researches and producing statistics during the pandemic period caused by Covid-19.

The companies have seven days, as of IBGE’s President instructions about the proceedings, to share names, telephone numbers and addresses of their clients (individuals and legal entities). According to the text, the only objective is the carrying out of researches exclusively by IBGE Foundation, since it clearly prohibits the sharing of the data with any third-parties. Additionally, not only the personal data but also any information subject to the MP 954 must be deleted within thirty days after the current emergency period is surpassed.

MP 954 highlights the confidentiality of the shared data, as well as the prohibition on the use of such data as evidence in administrative, tax or judicial proceedings, as already set forth in Law no. 5534/1968 (Statistic Information Law). It also determines that IBGE Foundation must list in its website the situations in which the data was used and prepare a data protection impact assessment report, according to the LGPD (Law no. 13709/18 – Brazilian General Data Protection Law).

The MP 954 is already in force, but it has been criticized by two political parties (PSB and PSDB) who filed for an unconstitutionality legal action with the Brazilian Supreme Court claiming that the unregulated sharing of data is “a threat to the democratic system”, since the IBGE Foundation would have access to data belonging to more than 70% of Brazilians and, with the support of technology, it would “enable illegitimate interferences” over data subjects.

Although the PSB's petition mentioned the protection granted by the Federal Constitution to the right of privacy and the principles already covered by the Brazilian Internet Act, the party claims that, pursuant to the LGPD's *vacation legis*, there would be no other legal provision regulating data protection in Brazil, specially with respect to public entities, increasing the vulnerability of the data and likelihood of incidents.

Our Digital Law team is monitoring this matter and other news regarding data protection. If you would like to receive further information, please do not hesitate to contact us at digital@kasznarleonardos.com.