

ANPD Publishes Draft Resolution on the Enforcement of LGPD to Small Business Data Processing Agents



On August 30, 2021, the Brazilian Data Protection Authority (ANPD) published a draft resolution on the application of the General Personal Data Protection Law (LGPD) for **small business that process personal data**.

“Small business agents” include **microenterprises, small businesses,* startups** and non-profit legal entities, natural persons and non-personalized entities** that assume typical controller or processor obligations.

* Microenterprises and small businesses must earn, annually, gross income equal to or less than BRL R\$4.8 million.

** Organizations that meet the criteria of art. 4 of Complementary Law No. 182 of 2021.



The published draft is still subject to **public consultation**, until September 29, 2021, and there will be a virtual **public hearing** on the subject, scheduled for September 14 and 15, 2021.

Layoffs and flexibilities obligations are provided for by the draft, such as:

- Power to choose to **anonymize, block or delete** excessive personal data or data that do not comply with the LGPD, when requested;
- Exemption from **providing a clear and complete statement** indicating the origin of the data, the lack of registration, the criteria used and the purpose of the processing, when the data subject requests confirmation and access to personal data;
- Exemption from performing **data portability**, when requested by the data subject;
- Exemption from the obligation to keep **records of personal data processing operations**—ANPD will make available voluntary and simplified templates, whose implementation will be considered in the parameters for applying the sanctions;
- Appointment of a **Data Protection Officer (DPO)** will not be mandatory. If there is no DPO, there must be a communication channel with data subjects;
- **Data Protection Impact Assessment (DPIA)** may be presented in a simplified form, when required;
- **Communication of security incidents** may be waived or made more flexible, as provided later by ANPD;
- **Double deadline** to meet requests from data subjects, communicate to ANPD and data subjects in case of a security incident and to present information requested by ANPD.

IMPORTANT: Such layoffs and flexibility obligations are not applied to small business data processing agents that carry out high-risk and large-scale processing for data subjects.

The draft's definitions of "high-risk" and "large-scale" are similar to the European authorities' definitions in regard to the application of the DPIA.

High-risk processing

Includes:

- **Sensitive data or data from vulnerable groups**, including children and adolescents and the elderly.
- Surveillance or control of **publicly accessible zones**.
- **Use of emerging technologies that may cause material or moral damages to the data subjects**, such as discrimination, violation of the right to image and reputation, financial fraud and identity theft.
- **Automated processing of personal data that affects the interests of the data subjects**, including decisions aimed at defining their personal, professional, consumer and credit profile or aspects of their personality.

Large-scale processing

Processing is considered large-scale when there is a significant number of data subjects, considering the volume of data and the duration, frequency and geographic extension of the processing. **Note:** Large-scale processing of employees or processing for exclusive administrative management purposes will not be considered large-scale processing.