



DATA PROTECTION IN THE PORTUGUESE HUB (II): BRAZIL AND CAPE VERDE

In our last newsletter we analyzed the Angolan law on personal data protection, and in this issue we end our quick tour on the topic in Portuguese speaking countries. Our two destinations, Brazil and Cape Verde, still have some way to go, although more in the former case than in the latter.

Brazil desafinado

Despite its new status as one of the world's economic main players, Brazil has not yet enacted legislation with regard to personal data protection. Naturally, this poses problems as to the transfer from and into Brazil of personal data, and has hindered the country's potential as a data-processing center. There is however a draft version of a Data Protection Act (hereinafter, the Draft) that has been in discussion

for over two years.

The Draft is divided into four sections: Safeguard of Personal Data (Section I); Administrative Safeguards (Section II); Code of Good Practice (Section III); Transitory and Final Provisions (Section IV).

Conditions for consent are a keystone of any data protection law and the Draft establishes that the controller must inform the data subject: a) on the ends of the processing; b) of the identity and domicile of the controller; c) whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply; d) of the categories of recipients of the data; e) of the data subject's rights.

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Technical and organizational measures to protect personal data are always a sensitive issue and even among EU Member States local laws vary greatly. The Draft does not provide any specific guidelines, simply stating that the controller shall adopt appropriate protection measures with regard to the state of the art, the nature of the protected data and characteristics that are specific to the processing.

Nevertheless, according to the Draft, the Supervisory Authority (Autoridade de Garantia) shall provide a minimum set of rules that will be published, at the latest, one year after the Act has entered into force. Such set of rules will be updated pursuant to the state of the art and the experience gathered in the meantime.

Transfer of personal data to third

countries shall depend on the existence of a similar level of protection in the host country. However, the following exceptions apply when:

- a) the data subject has given his consent;
- b) the transfer is necessary for the performance of a contract between the data subject and the controller;
- c) the transfer is necessary or legally required on important public interest grounds;
- d) the transfer is necessary for the purposes of cooperation between international intelligence and investigation services;
- e) the transfer is necessary for the defense of rights in Court;
- f) the transfer is necessary for the protection or physical integrity of the data subject or a third party.



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Cape Verde: close but no cigar

As regards Cape Verde, Law 133/V/2001, of January 22, has been in existence for some years, which reinforces the notion that its legislation follows Portugal's the closest and its legal framework is the most company friendly among the Portuguese speaking African countries

Still, some crucial aspects remain to be solved, not least of which the appointment of a Supervisory Authority. Curiously, Cape Verde's Data Protection Act has established that this task will fall into the hands of a Parliamentary Commission for Inspection (Comissão Parlamentar de Fiscalização) instead of the usual independent public body.

The Act does establish specific protection measures when processing sensitive data (ie, data pertaining to the following categories: politics, ideology, trade union or political party membership, private life, health and sex life, including genetic data, faith and race).

These measures include:

- a) access control (whether physical or by means of computers);
- b) personnel control: who can introduce data in the system and when;
- c) blocking any access by non authorized personnel;

- d) transportation control in order to prevent that the data are copied, read, modified or cancelled;
- e) transmission control to check data recipients.

Processing of sensitive data shall be the object of an a priori control by the Parliamentary Commission for Inspection in the form of an authorization. Said authorization shall include:

- a) identification of the controller;
- b) categories of processed data;
- c) purposes of the processing and data recipients;
- d) means of exercising access and rectification rights;
- e) interconnection of personal data processing;
- f) data transfer to other countries.

In conclusion, the existence of a Portuguese hub can work wonders for Portuguese-speaking countries, an area that has experimented a spectacular growth in recent years. However, in order to derive the full benefits some common practical rules should be put in place. The processing of data, being one of the major necessities for companies around the world, should be addressed by implementing legislation, appointing supervisory authorities and ensuring there is a similar level of protection amongst them.

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