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## FEATURED Q&A

# Is Brazil Taking the Right Steps With Data Privacy?



Lawmakers in Brazil are debating legislation designed to protect consumers' private data. // Image: Pixabay.com.

**Q** Brazil's Chamber of Deputies last month gave the green light to the General Data Protection Act, long-debated legislation that follows Europe's sweeping General Data Protection Regulation, or GDPR, which went into effect May 25. The legislation would require consent for public and private companies to store users' private data, among other changes. How does Brazil's legislation compare to similar steps that Europe and other countries are taking on data protection and privacy? Will the measure soon be enacted into law? What do stakeholders stand to gain or lose the most from Brazil's new regulations?

**A** Marcel Leonardi, senior counsel for public policy at Google Brazil: "Brazil's Chamber of Deputies approved a comprehensive data protection bill last month. Now the Senate and the executive branch need to review it together and decide how fast to move with it. When enacted, the legislation will take 18 months to come into effect—so in 2020 at the earliest. The adoption of a comprehensive data protection regime in Brazil has been a long process. Many stakeholders did not immediately grasp its impact, and only recently have traditional economic sectors really engaged in the conversation. The bill is similar to GDPR in several areas. 1) scope: it applies to any data collected or any data processing within Brazil and also to processing connected to offering goods or services to people in Brazil, regardless of the location of controllers or processors; 2) personal data: 'any information relating to an identified or identifiable natural person'; 3) legal basis for processing: unambiguous consent (explicit for sensitive data); contract;

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## TODAY'S NEWS

### POLITICAL

## U.S. Immigration Debate Heats Up

Republicans in the U.S. House of Representatives plan to meet today to find a compromise on controversial efforts by a group of party moderates to force votes on sweeping immigration reforms.

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### ECONOMIC

## Inflation Soars Past 24,000% in Venezuela

New data released by critics of Venezuela's government showed that inflation for the month of May spiked 110 percent over April's rate.

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### BUSINESS

## Hackers May Have Stolen More From Chilean Bank

A robbery at Banco de Chile in the midst of a massive computer attack last month could have netted more than the \$10 million that the bank had originally estimated. Chief executive Eduardo Ebersperger Orrego assured customers that none of their accounts were compromised.

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Eduardo Ebersperger Orrego // File Photo: Banco de Chile.

## POLITICAL NEWS

## House Immigration Debate Heats Up

Republicans in the U.S. House of Representatives plan to meet today to find a compromise on controversial efforts by a group of party moderates to force votes on sweeping immigration reforms, Bloomberg News reported. Disagreements over a pathway to citizenship for undocumented immigrants brought to the U.S. as children, known as Dreamers, have blocked any deal to date, along with changes to legal visas and funding for President Donald Trump's proposed border wall. The group needs just three more signatures on a petition that would put four different immigration bills on the floor, against the wishes of GOP leaders. In related news, U.S. Attorney General Jeff Sessions declared Monday that immigrants who are victims of domestic violence in their home countries will no longer automatically qualify for asylum in the United States, The Wall Street Journal reported. The decision overturns a 2016 federal immigration appeals board's decision. Refugee advocacy groups criticized the ruling. "Attorney General Sessions' decision to limit the reasons why people can claim asylum is a devastating blow to families who come to our country seeking protection and safety," said Michelle Brané with the Women's Refugee Commission.

## ECONOMIC NEWS

## Venezuela Inflation Soars Past 24,000%: Opposition Data

New data released by critics of Venezuela's government on Monday showed that inflation for the month of May spiked 110 percent over April's rate, sending annual inflation past 24,000 percent, Deutsche Welle reported. The country's currency, the bolivar, has plunged nearly 100 percent in value over the course

of the past 12 months. "It's a tragedy that we are experiencing every day," said opposition spokesman Rafael Guzmán. The government of President Nicolás Maduro blames U.S. sanctions and financial speculators for the problem. The opposition's figure is nearly twice the latest International Monetary Fund forecasts, which put Venezuela's hyperinflation at 13,800 percent this year. Meanwhile, Venezuela's Central Bank on Monday said that international reserves have fallen to \$8.87 billion, the lowest level in 24 years, Tal Cual reported. Foreign currency reserves have fallen 66 percent since Maduro took office in 2013. European Union officials last week pledged to spend more than \$40 million to help Venezuelans suffering from shortages of food and medicines, as well as economic refugees who have left their homes seeking help in neighboring Colombia, Brazil and elsewhere, the Associated Press reported. "Many people are lacking crucial medicines and are in need of humanitarian assistance," Commissioner Christos Stylianides said. "We cannot remain bystanders to this human tragedy."

## BUSINESS NEWS

## Hackers May Have Stolen More From Chilean Bank: Report

A robbery at Banco de Chile in the midst of a massive computer attack last month could have netted more than the \$10 million that the bank had originally estimated, América Economía reported Monday. Hackers on May 24 reportedly used a variant of the KillDisk malware to distract the bank's security staff before shifting funds via SWIFT, a secure messaging cooperative. Bank employees disabled 9,000 workstations in an effort to stop the virus's spread before they spotted "unusual transactions," originally thought to amount to around \$10 million worth of pesos. Unnamed sources told La Radio that the privately held bank could have been defrauded of an amount close to \$100 million, according to the report. Earlier

## NEWS BRIEFS

## New Barbados Prime Minister Tweaks Taxes

Prime Minister Mia Mottley, whose Barbados Labor Party came into office following the May 24 general election, announced a string of new taxes on Monday aimed at shoring up the struggling Caribbean nation's fiscal accounts, the Jamaica Gleaner reported. Changes include abolishing the controversial National Social Responsibility Levy, a tax imposed on goods imported into Barbados and on domestically manufactured goods purchased locally. Mottley also removed a road tax, replacing it with a fuel tax. She also introduced a new tax band of 40 percent on high-income citizens.

## First Venezuelan Child in 40 Years Contracts Polio

A child has been diagnosed with polio in Venezuela for the first time in nearly 40 years, CNN reported Monday, citing the Pan American Health Organization. The Western Hemisphere had been certified polio-free since 1994. Although vaccinations prevent the spread of polio, there is no cure and it can be deadly. The polio-infected child is just under three years old and first experienced paralysis in April, according to a PAHO statement. Because of chronic medicine shortages in recent months, getting vaccines to remote areas, where the child lives, has been difficult.

## Pope Accepts Resignations of Three Chilean Bishops

Pope Francis on Monday accepted the resignations of three Chilean bishops over a child sexual abuse scandal, BBC News reported. The most controversial of the three, Juan Barros, had initially received support from the Argentina-born pontiff, but a public outcry over a cover-up of sexual abuses committed by a priest in the 1980s and 1990s eventually led to his dismissal. All of Chile's 34 Roman Catholic bishops had offered their resignations.

this month, Banco de Chile chief executive Eduardo Ebensperger Orrego assured customers that none of their accounts were compromised, The Register reported. The ministries of interior and finance have called for meetings with bank regulators to discuss the case. The chair of the Economy Committee in Chile's Senate, Ximena Rincón, said this month that the country's banking laws and oversight needed an "urgent update." Chile is not the only country in the region with banks being hit by cyber thieves. Mexican banks have seen an unprecedented level of cyberattacks this year, Central Bank chief Alejandro Díaz de León said last month. The attacks have included incidents in which thieves siphoned as much as \$20 million out of the country's banks. [Editor's note: See related [Q&A](#) in the May 3-16 edition of the biweekly Financial Services Advisor.]

## Mexico's Grupo Gepp Closes Some Plants Citing Security

Grupo Gepp, a bottler of PepsiCo brands in Mexico, on Monday said it had temporarily closed its commercial operations and distribution center in Ciudad Altamirano, in Guerrero state, over security concerns, Excelsior reported. "The conditions required for the continuity of the distribution of our product portfolio to the market are not present," the company said in a statement. Last month, dairy distributor Lala temporarily suspended its distribution center in Tamaulipas state, which borders Texas. "The security conditions in the city were not adequate to continue operating," the company said at the time, according to the report. In related news, a congressional candidate in neighboring Coahuila state on Friday was killed by a gunshot in the head while posing with a well-wisher for a photo, CNN reported. Fernando Purón had just finished an election debate with his rival congressional candidates in the U.S. border city of Piedras Negras, when a bearded gunman stepped up behind the pair and shot Purón in the head. Purón was the 112th political candidate murdered in Mexico since September 2017.

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legal obligation; legitimate interests of the controller or third party; public interest; and vital interests of the subject; 4) international data transfers: adequacy model (the DPA issues adequacy decisions) or based on specific consent, binding corporate rules, model contractual clauses, code of conduct, certifications; 5) data protection authority: led by a three-person council, aided by a 23-person multi-stakeholder advisory board; 6) liability: separate liability for processors and controllers; 7) fines and sanctions: up to 2 percent of total turnover of the economic group in Brazil, per infraction, limited to 50 million reais (\$13.1 million). Data leaks or incidents may be publicized, and companies may be prevented from processing personal data. Brazil has never had a comprehensive data protection regime, so the legislation will represent a sea change for the local private sector. It is too early to tell how companies will act—those seeking GDPR compliance will probably have an easier time."

**A Thomas Morante and Barbara Efrain, attorneys at Holland & Knight:** "Although data protection bills had been proposed in Brazil for years, it took the implementation of GDPR, with its extraterritorial reach, to reignite debate about the need for data protection legislation in Brazil. In response, Brazil's Chamber of Deputies recently approved the General Data Protection Act and sent it to the Senate for debate. Under the bill, Brazil would create a National Data Protection Authority and a National Council for the Protection of Personal Data to govern the implementation and monitoring of the new law. The bill shares similarities with GDPR. This is not surprising, given that European officials advised the Brazilian government on the bill. For example, the legislation applies to those who process personal data, regardless of location, provided that the personal data is processed in Brazil, is intended to offer or supply goods and services for individuals in Brazil or is gathered in Brazil. It also

defines personal data as any information relating to an identified individual. It requires companies to obtain their clients' (that is, data holders') consent before collecting their personal data. Additionally, it protects information on political affiliation, religious beliefs, sexual orientation and health. It also

**“Data privacy is clearly top priority in Latin America these days.”**

— Thomas Morante and Barbara Efrain

provides that people have control of their own data, and thus, have a right to transfer it. Finally, it lists penalties ranging from monetary fines to suspending data-processing activities. If adopted, most data-processing entities will have 18 months to comply by notifying customers, informing them of their rights and obtaining their consent. The Senate has not yet voted, but the measure is expected to be approved and proceed soon to the president for his signature. Likewise, Argentina has a draft bill intended to update its 2000 Personal Data Protection Law. Data privacy is clearly top priority in Latin America these days."

**A Tatiana Campello and Matheus Bastos Oliveira, attorneys at Demarest Advogados in Brazil:** "Brazil's Congress is discussing two important draft bills aiming to set a new framework for general data protection. The Senate was debating bill number 330/2013, and the Chamber of Deputies recently approved bill 53/2018, handing the discussion of the bill over to the Senate. The Brazilian legislative bodies are riding a wave of European GDPR approval, which has sped up the discussion and influenced the concerns over general data protection in Brazil. The Senate is expected to approve bill number 53/2018 with minor changes. It is not possible to

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estimate a time frame yet. The measure has adopted some relevant aspects of Europe's GDPR, which is expected to be maintained in the final language, such as 1) scope of application, including extraterritorial jurisdiction; 2) the freely given, specified and informed consent for treatment of personal data; 3) the right to withdraw consent at any time; and 4) the creation of a public authority to be responsible for monitoring and enforcement of data protection regulation. Bill number 53/2018 also provides for a representative who will assume duties similar to the ones undertaken by the GDPR's data protection officer. The approval of a general data protection regulation in Brazil will lead the country to a future of international data transactions, with remarkable advantages for stakeholders and international commerce between Brazil and Europe."

**A** **Ashley Friedman, senior director of global policy at the Information Technology Industry Council:** "There is a global discussion surrounding data privacy happening, and governments, consumers and businesses are working together to grapple with tradeoffs around technologies that are an integral part of our lives and our economy. Over the past few years, Brazil's Congress has been debating bills that seek to provide comprehensive protection of Brazilian citizens' data, encourage and enable economic growth and innovation in Brazil, and provide an interoperable framework that supports cross-border data flows and reflects the global value chains that businesses operate around the world. The version that passed the lower house in May and is being debated in the Senate now strikes a good balance by empowering users to understand how and

when their data is used, while also enabling companies to continue providing services and developing new innovations. When this bill is passed, Brazil will serve as a model

**“Brazil will serve as a model for the region in bridging various privacy regimes.”**

– Ashley Friedman

for the region in bridging various privacy regimes, like the European GDPR or the APEC Cross Border Privacy Rules, that protect personal data and allows the benefits of technology to flourish."

**A** **Michael C. Malarkey, managing director of Alvarez & Marsal Disputes and Investigations:** "Brazil's data protection legislation reflects an E.U.-led trend of enabling consumers to opt-in to private data usage by companies. This mirroring of GDPR isn't surprising since the European Union accounts for more than 19 percent of Brazil's export volume, making compliance with the new law an economic issue as well as a consumer one. One might expect that any country with robust business ties to the European Union (Mexico, Chile, Colombia and Peru, for example) will follow suit with similar consumer protections that affect aspects of marketing, information technology, engineering and sales units."

*The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at [gkuleta@thedialogue.org](mailto:gkuleta@thedialogue.org).*

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