



October 30, 2024

COMMENTS ON ANPD REGULATORY AGENDA

CONSULTATION FROM AUTORIDADE NACIONAL DE PROTEÇÃO DE DADOS ON 2025-2026 REGULATORY AGENDA

Introduction

The Global Data Alliance¹ welcomes the opportunity to provide feedback to the National Data Protection Authority (Autoridade Nacional de Proteção de Dados - ANPD) on the public consultation for the ANPD's draft regulatory agenda for 2025-2026.

The GDA is a cross-industry coalition of nearly [100 companies](#) from across Africa, Asia, Europe, Oceania, and the Western Hemisphere. GDA members are committed to high standards of data responsibility and rely on the ability to transfer data around the world to innovate and create jobs. The GDA is a strong supporter of the ANPD and its regulatory agenda in relation to cross-border data policy norms.

We recognize the importance of the Brazilian Personal Data Protection Law (LGPD) and appreciate the ANPD's transparency in identifying its priorities for 2025 and 2026. We focus on two issues: (1) the importance of ensuring the ANPD's regulatory agenda facilitates stakeholder engagement and (2) continuing to support cross-border data transfers.

Using the ANPD's Regulatory Agenda to Facilitate Stakeholder Engagement

We commend the ANPD for publishing a draft regulatory agenda for 2025-2026. Creating a public agenda identifying the agency's priorities can help stakeholders focused on privacy and data protection to plan their engagement in the ANPD's upcoming initiatives. For example, stakeholders can use the agenda to better focus their resources on the topics that are highest priorities for the ANPD, helping them provide more practical input to the agency. By recognizing a broad set of initiatives, the ANPD's draft regulatory agenda also helps stakeholders across industry and advocacy organizations understand how the topics they focus on relate to other topics the ANPD is addressing. That can promote more holistic and thoughtful feedback from stakeholders, creating more useful input for the ANPD.

We encourage the ANPD to use its regulatory agenda to promote broad stakeholder engagement on these issues. For example, to help stakeholders plan their participation in upcoming consultations and direct their

resources accordingly, it would be helpful for the ANPD to publish more specific timeframes on each of the initiatives in the regulatory agenda as those timeframes become available. In addition, ensuring the regulatory agenda is published in an easy-to-locate format on the ANPD's website can help promote greater understanding among the public and consumers about the ANPD's priority areas.

Further Support for International Data Transfers

The draft regulatory agenda does not identify initiatives related to international data transfers. While we appreciate the ANPD's approval of its regulation on international data transfers earlier this year, we encourage the ANPD to add to the regulatory agenda an initiative recognizing the need to further implement that regulation and to continue supporting international transfers. For example, an initiative could focus on: (1) recognizing equivalent standard contractual clauses (SCCs) in other jurisdictions, and (2) recognizing other countries and international bodies as adequate. While both activities would occur pursuant to the recently-finalized regulation, adding these items to the regulatory agenda can help ensure they remain a priority for the ANPD. Given the importance of this issue, we recommend placing it in the subset of top priorities for Phase I.

Cross-border data is critical to digital transformation of economies, industries, and enterprises of all sizes. Data transfers are important to digital transformation efforts among all economies. While cross-border data has importance for digital transformation efforts of all firms, access to such data is especially important for micro, small, and medium-sized enterprises (MSMEs) that benefit disproportionately from cross-border market opportunities yet lack the resources of larger entities to navigate diverse data barriers in different markets. Cross-border access to marketplaces, purchasers, suppliers, and other commercial partners allows local MSMEs to engage in international transactions and create jobs at home.²² Cross-border data is also necessary to digital transformation at every stage of the value chain³ across every sector,⁴ including the agriculture,⁵ automotive,⁶ clean energy,⁷ finance and insurance,⁸ healthcare⁹ and medical technology,¹⁰ logistics,¹¹ media,¹² pharmaceutical,¹³ and telecommunications sectors.¹⁴

Data transfers are also important to many governmental policy objectives: Not only do restrictive cross-border policies fail to protect privacy and personal data,¹⁵ but they also hurt developing countries¹⁶ and small businesses;¹⁷ impede financial equity and inclusion;¹⁸ undermine data security and cybersecurity;¹⁹ threaten human rights;²⁰ slow science and innovation;²¹ and impair various health and safety,²² environmental,²³ and other regulatory compliance priorities.²⁴ *See generally*, the Global Data Alliance Issues Page.²⁵

ANPD's approach to cross-border data policy has been widely praised, given the focus on promoting responsible data transfers via a regulatory framework that is interoperable with other economies. Indeed, Brazil recently ranked in the top tier of global economies' cross-border data policy environments in the GDA Cross-Border Data Policy Index.²⁶ We urge ANPD to build on this success in continuing to advance interoperable regulatory norms for cross-border data transfers, thus securing Brazil's place in the international science, technology, business and regulatory landscape.

Conclusion

Thank you again for your work to create a clear regulatory agenda for the ANPD in 2025 and 2026. We welcome an opportunity to further engage with the ANPD on these important issues.

¹ For more information, please see the GDA website at www.globaldataalliance.org. GDA member companies are active in the accounting, agriculture, automotive, aerospace and aviation, biopharmaceutical, consumer goods, energy, film and television, finance, healthcare, hospitality, insurance, manufacturing, medical device, natural resources, publishing, semiconductor, software, supply chain, telecommunications, and transportation sectors. GDA member companies have operations and support tens of millions of jobs across the globe.

² USAID Digital Strategy, 2020–2024, <https://www.usaid.gov/usaid-digital-strategy>, p. 37. As the US Agency for International Development has explained, “[d]igital ecosystems have the potential to equip informal merchants, women entrepreneurs, smallholder farmers, and MSMEs engaged in cross-border trade with access to markets, information, and finance. These diverse users require trustworthy services that reflect their needs....[D]igital trade that spans borders depends on free data flows, digitized customs, and innovations in trade finance made possible by new approaches to lending.”

³ Global Data Alliance, *Jobs in All Sectors Depend Upon Data Flows* (2020), at: <https://globaldataalliance.org/wp-content/uploads/2021/07/infographicgda.pdf>

⁴ Global Data Alliance, *The Cross-Border Movement of Data: Creating Jobs and Trust Across Borders in Every Sector* (2020), at: <https://globaldataalliance.org/wp-content/uploads/2021/07/GDAeverysector.pdf>

⁵ Global Data Alliance, *GDA Website – Agriculture* (2022), at: <https://globaldataalliance.org/sectors/agriculture/>

⁶ Global Data Alliance, *GDA Website – Automotive* (2022), at: <https://globaldataalliance.org/sectors/automotive/>

⁷ Global Data Alliance, *GDA Website – Energy* (2022), at: <https://globaldataalliance.org/sectors/energy/>

⁸ Global Data Alliance, *GDA Website – Finance* (2022), <https://globaldataalliance.org/sectors/finance/>

⁹ Global Data Alliance, *GDA Website – Healthcare* (2022), <https://globaldataalliance.org/sectors/healthcare/>

¹⁰ Global Data Alliance, *GDA Website – Medical Technologies* (2023), <https://globaldataalliance.org/sectors/medical-technology/>

¹¹ Global Data Alliance, *GDA Website – Supply Chain Logistics* (2022), <https://globaldataalliance.org/sectors/supply-chain-logistics/>

¹² Global Data Alliance, *GDA Website – Media and Publishing* (2022), <https://globaldataalliance.org/sectors/media-publishing/>

¹³ Global Data Alliance, *GDA Website – Biopharmaceutical R&D* (2022), <https://globaldataalliance.org/sectors/biopharmaceutical-rd/>

¹⁴ Global Data Alliance, *GDA Website – Telecommunications* (2022), <https://globaldataalliance.org/sectors/telecommunications/>

¹⁵ Global Data Alliance, *Cross-Border Data Transfers & Privacy* (2023), at: <https://globaldataalliance.org/issues/privacy/>

¹⁶ Global Data Alliance, *Cross-Border Data Transfers & Economic Development* (2023), at: <https://globaldataalliance.org/issues/economic-development/>

¹⁷ Global Data Alliance, *Cross-Border Data Transfers & Small Businesses* (2023), at: <https://globaldataalliance.org/issues/small-businesses/>

¹⁸ Global Data Alliance, *Cross-Border Data Transfers & Finance* (2020), at: <https://globaldataalliance.org/sectors/finance/>

¹⁹ Global Data Alliance, *Cross-Border Data Transfers & Cybersecurity* (2023), at: <https://globaldataalliance.org/issues/cybersecurity/>

²⁰ Freedom House, *Countering an Authoritarian Overhaul of the Internet* (2022), at: <https://freedomhouse.org/report/freedom-net/2022/countering-authoritarian-overhaul-internet> Freedom House explains the nexus between data transfer restrictions and human rights abuse as follows (emphasis added): “In at least 23 countries covered by Freedom of the Net, laws that limit where and how personal data can flow were proposed or passed during the coverage period. ... The transfer of data across jurisdictions is central to the functioning of the global internet and benefits ordinary users, including by improving internet speeds, enabling companies to provide critical services worldwide, and allowing the storage of records in the most secure data centers available. ... [S]ome [countries] have buried problematic obligations that either mandate domestic data storage, feature blanket exceptions for national security or state actors without safeguards, or delegate increased decision-making power to politicized regulators—all of which renders users vulnerable to government abuse despite improvements pertaining to the use of personal data for commercial purposes. Such contradictory “data washing” measures ultimately fail to strengthen privacy and further fragment the internet....”

²¹ Global Data Alliance, *Cross-Border Data Transfers & Innovation* (2023), at: <https://globaldataalliance.org/issues/innovation/>

²² Global Data Alliance, *Cross-Border Data Transfers & Biopharmaceutical R&D* (2022), at <https://globaldataalliance.org/sectors/biopharmaceutical-rd/>; Global Data Alliance, *Cross-Border Data Transfers & Medical Technology* (2023), at: <https://globaldataalliance.org/sectors/medical-technology/>; Global Data Alliance, *Cross-Border Data Transfers & Healthcare* (2022), at: <https://globaldataalliance.org/sectors/healthcare/>

²³ Global Data Alliance, *Cross-Border Data Transfers & Environmental Sustainability* (2023), at: <https://globaldataalliance.org/issues/environmental-sustainability/>

²⁴ Global Data Alliance, *Cross-Border Data Transfers & Regulatory Compliance* (2023), at: <https://globaldataalliance.org/issues/regulatory-compliance/>

²⁵ Global Data Alliance, *Cross-Border Issues Page* (2023), at: <https://globaldataalliance.org/issues/>

²⁶ Global Data Alliance, *Cross-Border Data Policy Index (2023)*, at: <https://globaldataalliance.org/wp-content/uploads/2023/07/07192023gdaindex.pdf>

The Cross-Border Data Policy Index assesses, across several metrics, each economy's national laws, regulations, and other measures that either restrict data transfers or mandate data localization. The Index evaluates measures relating to artificial intelligence, cybersecurity, privacy, law enforcement access, and international trade (among other topics).

Each measure that contains a localization requirement or a cross-border data restriction is assessed. These measures may include: (a) policies that expressly require data to stay in-country; (b) policies that impose unreasonable conditions on transferring data abroad; (c) policies that prohibit the transfer of data abroad; (d) policies that require the use of domestic data centers or other equipment; (e) policies that require data centers to be owned or operated by nationals; (f) policies that impose minimum shareholding requirements for nationals or maximum shareholding limits for non-nationals; (g) policies that prohibit the application of non-national laws to digital infrastructure or data; and (h) policies that impose import or export duties or other restraints on data transfers as they traverse digital networks.

Brazil – like many other Level 1 economies – has maintained a relatively open cross-border digital policy environment that is able to benefit from the cross-border exchange and access to knowledge, information, and digital tools. In many cases, Level 1 economies have adopted optimal policies future digital transformation and digital inclusion. This may include policies that:

- Allow cross-border data transfers to play an integral role in R&D activities;
- Promote the use of cross-border data for governmental health and safety regulatory processes or for R&D or scientific inquiry;
- Ensure that innovators – including under-resourced inventors – can transfer data across borders to protect their intellectual property (IP);
- Enable university and other educators and learners to maintain access to knowledge and information from around the world;
- Respect human rights and access to content and viewpoints without undue interference or distortion from authoritarian regimes; and
- Promote the adoption of products and services to benefit small-scale farmers, small businesses, artists, and entrepreneurs (among others) through access to cross-border market information and opportunities from abroad.

Many Level 1 economies recognize the potential of cross-border data to advance objectives of technology transfer and dissemination of knowledge across populations in a manner conducive to social and economic welfare. Many of these economies have also entered into international agreements containing binding commitments not to impose discriminatory or unnecessary restrictions on data transfers vis-à-vis their trading partners.