

---

PUBLICATIONS

---

ARTICLE 01.10.2019

NEXT STEPS ON BRAZILIAN DATA PROTECTION REGULATION

BY: LARISSA MARIA GALIMBERTI AFONSO, BEATRIZ LANDI LATERZA FIGUEIREDO, MARINA BERTUCCI FERREIRA,

Provisional Executive Order 869/2018 (MP 869/2018) issued by former President Michel Temer in December 2018 created the National Data Protection Authority (ANPD), amended a few articles of the Brazilian General Data Protection Act (GDPA), and postponed the GDPA effective date for six months to August 2020.

Provisional Executive Orders (or Provisional Measures – MP) are acts of the Executive Branch that are effective for a limited period (60 days, renewable once for a further 60 days), unless adopted definitively as law by Congress during such period. Both the House of Representatives and the Senate must review MP 869/2018 and either reject, approve or amend it. Unless it is approved by Congress within 120 days in total, MP 869/2018 will lapse. Congressional review will only commence in February 2019 due to parliamentary recess.

The amendments to the GDPA introduced by MP 869/2018 were shy and left aside some pressing issues in the GDPA, such as the prohibition of health data sharing under article 11, paragraphs 3 and 4 and the need for a Data Protection Impact Assessment (DPIA) for all data processing activities based on legitimate interest. In early February, Congress will have an opportunity to propose amendments to MP 869/2018 and perhaps deal with these controversial matters in the GDPA. There is a window of opportunity for companies to engage with Congress and advocate for changes.

The review of MP 869/2018 by Congress involves several phases, described below. These phases are usually expedited when there is enough consensus around a particular matter and coordination between the Executive Branch and Congress.

1. Joint Committee

A joint committee composed of 13 senators and 13 representatives will review constitutional and substantive aspects of MP 869/2018, as well as financial and budgetary adequacy. The joint committee will also receive and consider amendment proposals from congresspersons; an assigned rapporteur can also propose additional amendments. Senators and representatives can only propose amendments to the joint committee in the first six days after Congress resumes its works (after parliamentary recess), no subsequent proposals being permissible. The joint committee will consider all proposed amendments and issue an opinion. If the joint committee accepts and/or proposes amendments to the MP, it will be converted into a Bill of Law. If no amendment is proposed, the Provisional Measure status is maintained.

2. House of Representatives

The MP or Bill of Law will be put for a floor vote. The House of Representatives cannot propose new amendments at this point, but only consider the amendments proposed before the joint committee during the first six days. If the House of Representatives rejects the MP, it will not be forwarded to the Senate and will lapse.

3. Senate

If the MP or the Bill of Law passes the House of Representatives, it will be forwarded to the Senate for a floor vote. The Senate also cannot propose new amendments at this point, but only consider the amendments proposed to the joint committee. The Senate can then accept, reject or amend the Provisional Measure or Bill of Law from the House and, if it decides to reject the MP in its entirety, it will be shelved. If the Senate amends the MP or Bill of Law, it will return to the House of Representatives for a new vote.

If both the Senate and the House approve the MP (i.e. no amendments are introduced to the original text proposed by the President) it will be signed into law by the President of Congress. If at any point amendments are introduced to the MP, it is thus converted into a Bill of Law that will be eventually forwarded to President Jair Bolsonaro for approval or veto (including line item veto).

Finally, if the President chooses to veto a Bill of Law in whole or in part, the veto will return to Congress for consideration. Full majority of both Houses (half plus one of the total Congresspersons - regardless of attendance at the voting session - which means 257 representatives and 41 senators) is required to override a presidential veto.