

THE IMPORTANCE OF PEC 17/2019 FOR THE ENFORCEMENT OF DATA PROTECTION IN BRAZIL

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In the wake of recent events involving privacy violations and misuse of personal data in Brazil, an important bill to amend the Brazilian Constitution must be highlighted to individuals and practitioners advocating for the improvement of data protection rights in our country.

The amendment proposition number 17/2019 (local acronym “Proposta de Emenda Constitucional 17/2019”) was authored by senator Eduardo Gomes and is promised to be one of the main tools for the strengthening of the new regulation that comes into force in August 2020.

The reason for all the speculation around the bill is simple, and results from its content itself, as it aims to turn the protection of personal data on digital platforms into a fundamental right by listing it as a guarantee for citizens of the country.

The bill, on that ground, as long as approved by the Brazilian National Congress, will certainly bring even more changes on how companies deal with their clientele’s data, since the enforceability of the Brazilian general data protection regulation (local acronym "LGPD") will be now underpinned by a respect for a fundamental human right. Both regulatory inspections and the consequential imposition of fines arisen from possible non-compliance behaviors are expected to be strengthened with the amendment, being punishable with higher fines. The legal proposition makes it clear: the storage and use of personal information should be at the service of people and any violation of data may be punishable forcefully.

Beside the importance of the aforementioned considerations, whose potential, as previously described, may alter the current structure of data protection in Brazil, it is the second provision of the PEC 17/2019 that must attract attention of those who are worried with the proper functioning of the yet to come legislation: the National Congress is intended to be the sole authority entitled to enact legislation regarding data privacy.

The PEC 17/2019 is very logical in that sense, determining that only federal level entities will have powers to propose regulations about data protection rights. The measure is certainly needed to curb local and state lawmakers from enacting directives that may conflict with LGPD and other federal statutes regarding the subject. This proposition is extremely relevant to assure the effectiveness of LGPD in the whole country, preventing disagreements between federal and state governments over law-making powers and even between agencies that would be created by state and local governments over the right of supervision.

Moreover, it will give predictability to people, companies and even to lawyers, who will be able to assist their clients with more secureness, as patterns and rules will be better determined by a sole authority. It is worth remembering that one of the primary drivers behind the development of the European General Data Protection Regulation (“GDPR”) was to provide a single data protection regulation across the entire European market for the benefit of both business and consumers. That is exactly what must happen in Brazil.

In conclusion, it is possible to state that the changes proposed by PEC 17/2019 not only are welcome to the Brazilian jurisdiction, leaving it steadier and more legally secure, but also because they will equalize the LGPD to laws enacted in countries considered ideal for data protection and the development of privacy on digital platforms.