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ADVOGADOS



**ANPD initiates Public Consultations
on International Transfer and on the
Processing of Personal Data
grounded on Legitimate Interest**

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International Transfer of Personal Data

The draft proposes **specific guidelines** and **minimum guarantees** for international transfer, definitions of new and relevant terms, in addition to providing models of Standard Contractual Clauses and a deadline for adequacy.

The Resolution also brings the possibility of recognition and/or approval by ANPD of:



Equivalent Standard Contractual Clauses
originating from another country or international body



Specific Contractual Clauses
in order to tailor international transfers of data that cannot be carried out on the basis of contractual standard clauses



Global Corporate Rules
intended for international data transfers among organizations of the same economic group, through a specific administrative process

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Processing of Personal Data grounded on Legitimate Interest

This legal ground has led to several discussions about its application and what would be considered **“legitimate interest”**.

In this sense, ANPD opened the aforementioned Public Consultation for a Preliminary Study on legitimate interest, divided into three parts:



Definitions and parameters of interpretation

identification of the nature of personal data (e.g., sensitive data; data of children and/or adolescents; how data will be used)



Considerations on legitimate interest

identification of the interest that justifies the processing and the evaluation of its legitimacy (including as to its purpose)



Balancing test

assessment of proportionality based on the context and specific circumstances of the data processing, taking into account the impacts and risks to the rights and freedoms of data subjects

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The balancing test should be applied for each specific purpose, and involves carrying out a weighing that considers the **legitimacy of the interest**, the **need for the processing**, the **impacts on the rights** of the subjects and their **legitimate expectations** compared to the interests involved. The test has three steps:



1

Purpose: analysis of the context of the processing, focusing on the benefits generated and on the intended purposes

2

Necessity: identify whether the processing based on legitimate interest is necessary to achieve the objectives of the previous step

3

Balancing and safeguards: balancing between the interests of the controller or of a third party and the fundamental rights and freedoms of the subject

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Next steps

Under ANPD's Regulatory Agenda, the instrument for **regulation on International Transfer** was expected to take place through the elaboration of a **Resolution by its Board of Directors**.

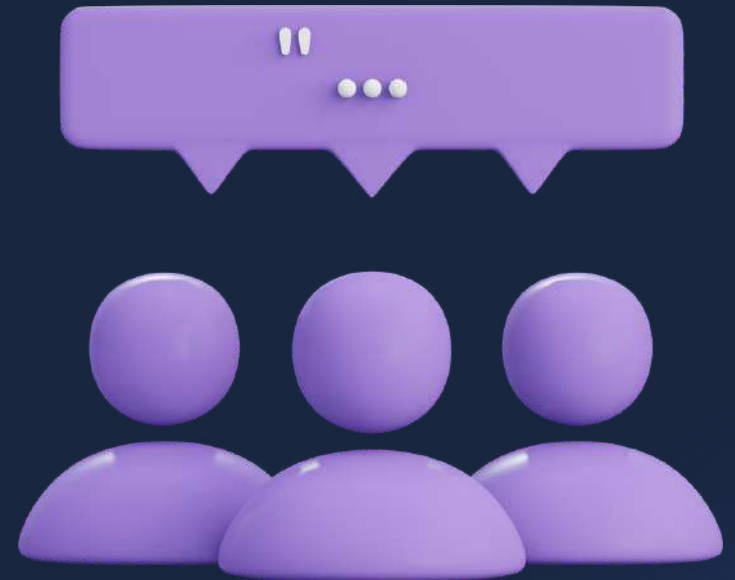


Regarding the legal grounds of processing, including legitimate interest, the regulation was expected to take place through the publication of a **Good Practices Guide**, which can be expected to be published by ANPD at the end of the current Public Consultation.

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Public Consultations

The Public Consultations for a Regulation on the **International Transfer of Personal Data** and on the **Preliminary Study on Legitimate Interest** were published on August 2023 and will be open to contributions by society until mid-September 2023.



CONTRIBUTIONS MUST BE SUBMITTED THROUGH THE PARTICIPA + BRASIL PLATFORM



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The Technology, Media and Telecommunications team at Azevedo Sette Advogados follows up on the development of this matter and is available for answering questions and providing contributions.



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