

CIPL Comments to ANPD Draft Regulations for International Data Transfers

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The Centre for Information Policy Leadership (CIPL)¹ welcomes the opportunity to comment on ANPD’s draft regulations on international data transfers. On June 29, 2022, CIPL filed a Response to ANPD’s Request for Comments on the Regulation of International Data Transfers,² and CIPL incorporates by reference the comments previously submitted.

In particular, CIPL wishes to highlight and further encourage ANPD to participate in the Global Cross Border Privacy Rules (Global CBPR) system, as well as the companion certification for processors, the Global Privacy Recognition for Processors (Global PRP) system, in reliance on arts. 33(II)(d), 35 and 36 of Brazil’s General Data Protection Law (LGPD). As noted in our earlier filing, the Global CBPR Forum³ is in the process of transitioning the current APEC CBPR and PRP into Global CBPR and PRP, which would enable non-APEC countries like Brazil to participate in the systems. This past summer, the Global CBPR Forum granted Associate Status to the United Kingdom, the first non-APEC jurisdiction to express an interest in the systems.⁴ The Global CBPR and PRP systems seek to advance a multilateral and comprehensive solution to accountable, trusted, and efficient data flows.

Participation in the Global CBPR and PRP systems will have an added benefit of lessening the burden on resource-limited regulators like ANPD because front-line oversight and compliance are handled by third-party certification bodies, known as accountability agents. Ultimate enforceability, however, would remain with ANPD and the other global data protection authorities that participate in the systems.

Similarly, we encourage ANPD to recognize the validity of certifications and other approval-based transfer mechanisms that organizations have received from other jurisdictions that offer the same level of protection as the LGPD, as they indicate that a robust regulatory review of processes and controls has taken place. This would enable organizations that already work with those transfer mechanisms to use them in Brazil as well, which would increase efficiency and reduce compliance costs.

¹ CIPL is a global privacy and data policy think tank in the law firm of Hunton Andrews Kurth LLP and is financially supported by the law firm and 85+ member companies that are leaders in key sectors of the global economy. CIPL’s mission is to engage in thought leadership and develop best practices that ensure both effective privacy protections and the responsible use of personal information in the modern information age. CIPL’s work facilitates constructive engagement between business leaders, privacy and security professionals, regulators and policymakers around the world. For more information, please see CIPL’s website at <http://www.informationpolicycentre.com/>. Nothing in this submission should be construed as representing the views of any individual CIPL member company or of the law firm of Hunton Andrews Kurth.

² See CIPL Response to Brazil ANPD's Request for Comments on the Regulation of International Data Transfers, available at https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_response_to_anpd_request_for_comments_on_the_regulation_of_international_data_transfers_29_june_2022_.pdf.

³ For additional information, see the Global Cross-Border Privacy Rules Declaration, <https://www.commerce.gov/global-cross-border-privacy-rules-declaration>. See also the Global CBPR Forum website at <https://www.globalcbpr.org/>.

⁴ See Press Release: “UK gets new status in global data privacy certification programme,” available at <https://www.gov.uk/government/news/uk-gets-new-status-in-global-data-privacy-certification-programme>.

Indeed, certification and codes of conduct schemes may be the most effective data transfer instruments, since they are consistent and public, thereby enhancing accountability while avoiding excessive contractual paperwork. Many organizations were hoping to use certifications after the EU GDPR came into force, but this mechanism has not yet gained traction. With the launch of the Global CBPR Forum, there is an expectation that CBPR and PRP certifications will increase and become the dominant solution to the governance of cross-border data flows among an increasing number of countries.

CIPL also wishes to highlight that the Global CBPR and PRP systems will provide effective and accessible tools to resolve potential enforcement challenges arising in the context of international data transfers. What was formerly known as the APEC Cross-Border Privacy Enforcement Arrangement (CPEA) is in the process of being updated and renamed as the Global Cooperation Arrangement for Privacy Enforcement (CAPE). Like CPEA, CAPE will provide mechanisms to promote effective cross-border cooperation between enforcement authorities, permitting referrals of matters as well as parallel or joint investigations and enforcement actions. Moreover, companies participating in the Global CBPR will be required to use dispute settlement mechanisms provided to individuals by the accountability agents. Thus, CIPL encourages ANPD to join the Global CBPR Forum and participate in the process of globalizing the CBPR and PRP.