

## Comparing the GDPR and Brazil: Overview

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A quick reference Chart comparing some of the key requirements of Brazil's General Data Protection Law (LGPD) and the EU General Data Protection Regulation (GDPR). This Chart does not cover every topic addressed by these laws or provide detailed guidance on necessary steps to comply with the laws.

This Chart provides a high-level comparison of some of the key requirements under [Brazil's General Data Protection Law \(Law No. 13.709/2018 of August 14, 2018\)](#) (LGPD) (in Portuguese) and the EU General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR).

The GDPR explicitly requires non-EU-based organizations that engage in certain EU-related activities to comply with its requirements. Brazilian organizations subject to the GDPR face different data protection obligations than the LGPD requires. These differences sometimes result in greater obligations to protect EU personal data.

Failing to comply with the GDPR carries substantial penalties and may result in fines of up to EUR20 million or 4% of the organization's total worldwide annual revenue for the preceding financial year, whichever is higher (Article 83(5), GDPR).

This Chart compares important topics under the LGPD and the GDPR, such as:

- Definitions of personal data and sensitive personal data.
- Appointing an EU representative.
- Appointing data protection officers.
- Completing data protection impact assessments.
- Maintaining processing records.
- Legal justifications for processing personal data and special categories of personal data, also called sensitive personal data.
- Requirements for appointing data protection officers.
- Requirements for maintaining processing records.

- Data subject consent.
- Data subject rights, such as notice, access, correction, erasure, and objection.
- Data security requirements.
- Breach notification requirements.
- Cross-border personal data transfers.

This Chart does not cover every topic addressed by these laws or provide detailed guidance on necessary steps to comply with the laws. It includes guidance issued by Brazil's National Data Protection Authority (ANPD). For a more detailed comparison of the GDPR and the LGPD, see [Practice Note, GDPR Compliance for Brazilian Businesses](#).

### Applicability of the GDPR and National Law

The GDPR applies to the processing of personal data by:

- Controllers and processors established in the EU.
- Certain non-EU-established data controllers and data processors.

(Article 3(1), GDPR.)

The GDPR introduced a single legal framework across the EU. However, several GDPR provisions allow EU member states to enact national legislation specifying, restricting, or expanding the scope of some of the GDPR's requirements. The European Data Protection Board (EDPB) has issued [Guidelines on the territorial scope of the GDPR \(Article 3\) \(EDPB 3/2018\) \(November 12, 2019\)](#). Non-EU-based organizations may be subject

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to requirements under multiple national laws. National laws implementing the GDPR are outside the scope of this Chart. For more, see Practice

Notice, Determining the Applicability of the GDPR: Applicability of EU Member State Laws and [GDPR National Implementation Legislation Toolkit](#).

### GDPR and the LGPD Comparison Chart

	GDPR	LGPD	Comparison
<b>Scope</b>	<p>Obligations apply to controllers (Article 4(7)) and processors (Article 4(8)) that process personal data:</p> <ul style="list-style-type: none"> <li>• Wholly or partly by automated means.</li> <li>• Other than by automated means when the personal data forms part of or is intended to form part of a filing system.</li> </ul> <p>(Article 2(1).)</p>	<p>Obligations apply to controllers (Article 5(VI)) and processors (Article 5(VII)) that process personal data.</p>	<p>LGPD and GDPR similarly apply to both controllers and processors that process personal data.</p>
<b>Extra-territorial application</b>	<p>Applies to:</p> <ul style="list-style-type: none"> <li>• Controllers and processors that process personal data in the context of the activities of an EU establishment, regardless of whether the data processing takes place in the EU (Article 3(1)).</li> <li>• Controllers and processors not established in the EU that process personal data about data subjects in the EU when the processing activities relate to: <ul style="list-style-type: none"> <li>– offering goods or services to data subjects in the EU, regardless of whether they require payment; or</li> <li>– monitoring their behavior that takes place in the EU.</li> </ul> </li> </ul> <p>(Article 3(2).)</p>	<p>Applies to controllers and processors if any of the following apply:</p> <ul style="list-style-type: none"> <li>• The processing takes place in Brazil.</li> <li>• The controller or processor processes personal data for supplying goods or services to individuals located in Brazil.</li> <li>• The controller or processor collects personal data in Brazil, regardless of where the processing takes place.</li> </ul> <p>(Article 3.)</p>	<p>Both the GDPR and LGPD have an extraterritorial reach.</p>
<b>Definition of personal data</b>	<p>Defines “personal data” as any information relating to an identified or identifiable natural person (data subject). An identifiable natural person is one that can be identified, directly or indirectly, by reference to an identifier such as name, ID number, location data, or online identifier (Article 4(1)).</p>	<p>Defines “personal data” as information related to an identified or identifiable natural person (Article 5(I)).</p>	<p>GDPR and LGPD include similarly broad definitions of personal data.</p>

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	GDPR	LGPD	Comparison
<b>Definition of sensitive personal data</b>	<p>Defines “special categories of personal data” (considered sensitive) to include:</p> <ul style="list-style-type: none"> <li>• Racial or ethnic origin.</li> <li>• Political opinions.</li> <li>• Religious or philosophical beliefs.</li> <li>• Trade union membership.</li> <li>• Health data and data about sex life or sexual orientation.</li> <li>• Genetic and biometric data.</li> </ul> <p>(Article 9(1).)</p> <p>Includes personal data that may indirectly reveal special categories of personal data concerning an individual (see <a href="#">Case C-184/20: OT v Vyriausioji tarnybinės etikos komisija (Chief Official Ethics Commission, Lithuania)</a>).</p> <p>The GDPR also regulates processing personal data related to criminal convictions or offenses (Article 10, GDPR).</p>	<p>Includes information on the following when linked to a natural person:</p> <ul style="list-style-type: none"> <li>• Racial or ethnic origin.</li> <li>• Religious belief.</li> <li>• Political opinions.</li> <li>• Union membership.</li> <li>• Religious, philosophical, or political organization membership.</li> <li>• Health or sexual life.</li> <li>• Genetic or biometric.</li> </ul> <p>(Article 5(II).)</p>	<p>GDPR and LGPD include similarly broad definitions of sensitive personal data.</p> <p>However, the GDPR also restricts processing criminal conviction or offense data and the LGPD does not address this processing.</p>
<b>Registration before processing</b>	Not required unless an EU member state law implementing the GDPR requires registration under specific circumstances.	Not required.	GDPR and the LGPD generally do not require registration.
<b>Processing principles</b>	<p>The six principles that govern personal data processing include:</p> <ul style="list-style-type: none"> <li>• Lawfulness, fairness, and transparency.</li> <li>• Purpose limitation.</li> <li>• Data minimization.</li> <li>• Accuracy.</li> <li>• Storage limitation.</li> <li>• Integrity and confidentiality.</li> </ul> <p>Controllers must:</p> <ul style="list-style-type: none"> <li>• Comply with the six principles when processing personal data.</li> <li>• Demonstrate compliance with all six principles.</li> </ul> <p>(Article 5.)</p>	<p>The ten principles that govern personal data processing are:</p> <ul style="list-style-type: none"> <li>• Lawful, specific, and informed purpose.</li> <li>• Process adequacy to purpose.</li> <li>• Necessity.</li> <li>• Free access to data subjects.</li> <li>• Data quality.</li> <li>• Transparency.</li> <li>• Security.</li> <li>• Prevention.</li> <li>• Non-discrimination.</li> <li>• Responsibility and accountability.</li> </ul> <p>(Article 6.)</p>	<p>GDPR and LGPD principles are similar, even though they may have different names. LGPD additionally includes the non-discrimination principle under which processing must not be for unlawful or abusive discriminatory purposes.</p>

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	GDPR	LGPD	Comparison
<b>EU representative</b>	Non-EU-based organizations engaging in certain activities must designate an EU representative in writing, subject to limited exceptions (Article 27).	Not required.	GDPR includes requirements that do not exist in the LGPD.
<b>Data protection officer (DPO)</b>	Required in certain circumstances (Article 37).	Requires controllers to designate a data protection officer whenever data is processed (Article 41).  However, the ANPD's <a href="#">Resolution CD/ANPD No. 2</a> (in Portuguese) established that small businesses that are not engaged in high-risk data processing are not required to appoint a DPO, provided they maintain a communication channel for data protection inquiries (Article 11).  <a href="#">ANPD Resolution CD/ANPD No. 18</a> (in Portuguese) establishes new guidelines and sets out DPO responsibilities.	Both LGPD and GDPR require the designation of data protection officers, but the LGPD appears to require designation under broader circumstances. The LGPD does not require processors to designate a DPO.
<b>Data protection impact assessment</b>	Required for certain types of high-risk processing, such as: <ul style="list-style-type: none"> <li>• New technologies.</li> <li>• Automated processing, including profiling, on which decisions are based that produces legal or other similar effects for a data subject.</li> <li>• Large scale processing of special categories of personal data or criminal conviction and offenses data.</li> <li>• Large scale, systematic monitoring of a publicly accessible area.</li> </ul> (Article 35).	The ANPD requires in cases of high-risk processing or when the controller relies on a legitimate interest as the processing basis ( <a href="#">ANPD: Personal Data Protection Impact Report (RIPD) Q&amp;A (April 6, 2023)</a> ) (Articles 10(II)(3), 38).	The GDPR specifies the cases where a data protection impact assessment plan must be carried out, while the LGPD delegates this determination to the ANPD.

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	Requires consultation with data protection authorities if assessment reveals high risks to data subject in the absence of risk mitigation measures taken by the controller (Article 36).		
<b>Records of processing activities</b>	Controller and processor must maintain a record of processing activities in a specified form, subject to limited exceptions (Article 30).	Requires controllers and processors to maintain records of personal data processing operations, especially when processing is based on a legitimate interest (Article 37).  Small businesses, startups, and “micro-enterprises) may use a simplified form (see <a href="#">ANPD: Model for Personal Data Processing Recordkeeping by Small Processing Agents</a> ).	The GDPR and LGPD include recording requirements. The GDPR specifies requirements for the form or content of these records for all controllers and processors. The LGPD leaves those requirements to the ANPD’s determination. To date, the ANPD has provided a specific form for small enterprises but not for larger organizations.
<b>Accountability</b>	Controllers must comply with the data processing principles (Article 5(1)) and demonstrate compliance (Article 5(2)).	Requires controllers and processors to adopt internal processes and policies to demonstrate compliance with the LGPD principles (Articles 6(X), 50).	GDPR and LGPD include similar accountability requirements.
<b>Conditions for processing personal data</b>	Requires a legal basis to process personal data (Article 6).	Requires a legal basis to process personal data (Article 7).	GDPR and LGPD similarly require a legal basis for processing personal data, but LGPD recognizes a broader set of legal bases than GDPR.
<b>Consent</b>	Consent is one legal basis for processing personal data recognized by the GDPR (Article 6(1)).  Consent must satisfy specific requirements, including that it be freely given, specific, informed, and unambiguous	Consent is one legal basis for processing personal data (Article 7(I)).  Consent must be: <ul style="list-style-type: none"> <li>• Freely given.</li> <li>• Specific.</li> </ul>	Both LGPD and GDPR include robust consent requirements.  The GDPR and LGPD do not require consent if another legal basis for processing applies.

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	<p>and the controller must be able to show it obtained consent (Articles 4(11) and 7).</p> <p>Implied consent and opt-out consent are not valid (Article 4(11)).</p> <p>Certain types of personal data processing under the GDPR require explicit consent, including when relying on consent to:</p> <ul style="list-style-type: none"> <li>• Process special categories of personal data.</li> <li>• Transfer personal data cross-border.</li> <li>• Make decisions based on automated personal data processing.</li> </ul> <p>(Articles 9, 22, and 49.)</p>	<ul style="list-style-type: none"> <li>• Informed.</li> <li>• Unambiguous.</li> </ul> <p>(Articles 5(XII) and 8.)</p> <p>Consent is not valid if the information provided to the data subject is:</p> <ul style="list-style-type: none"> <li>• Misleading.</li> <li>• Not presented transparently, clearly, and unequivocally.</li> <li>• Not given for a specific purpose or given generically.</li> </ul> <p>(Articles 8(3), (4), and 9.)</p> <p>Data subjects may consent in writing or through other means that demonstrate consent. However, if the data subject consents in writing, it must be included in a clause that stands out from the other clauses (Article 8(1)).</p> <p>Controllers have the burden of proving that they lawfully obtained consent (Article 8(2)).</p>	
<b>Conditions for processing special categories of personal data (sensitive data) and criminal convictions and offense data</b>	<p>Prohibits processing special categories of personal data unless an exception applies (Article 9).</p> <p>When relying on consent to process special categories of personal data, the controller must obtain explicit consent (Article 9(2)(a)).</p> <p>The GDPR also restricts processing personal data relating to criminal convictions and offenses unless certain conditions apply (Article 10).</p>	<p>Requires a legal basis to process sensitive personal data (Article 11).</p> <p>When using consent as the legal basis, the LGPD requires data subjects to “specifically and prominently” consent to sensitive personal data processing (Article 11(I)).</p>	<p>The GDPR and LGPD both restrict processing of special or sensitive categories of data and require a legal basis for processing. The LGPD includes some justifications that differ from those in the GDPR.</p> <p>The GDPR also restricts processing personal data relating to criminal convictions and offenses while the LGPD does not address this processing.</p>

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<b>Child consent</b>	Parental consent required for children under age 16. However, EU member states can lower the age of consent to a minimum of 13 (see <a href="#">Practice Note, GDPR Age of Child Consent Chart (EEA): Overview</a> ). (Article 8.)	Requires parental or legal representative consent for the processing of personal data of children under age 12 (Article 14(1)).  According to a May 2023 statement the ANPD issued ( <a href="#">CD/ANPD Statement No. 1 of May 22, 2023</a> ) (in Portuguese), controllers may use any legal basis under Article 7's standard legal bases or Article 11's bases for processing sensitive personal information, if minors' best interests take precedence.	The GDPR requires consent to process children's personal data, while the ANPD allows for other legal bases for processing minors' personal data under Articles 7 and 12 if minors' best interests take precedence.
<b>Direct marketing</b>	Permitted if the controller satisfies the GDPR's requirements for lawfully processing personal data and handling data subject objections to direct marketing (Articles 6 and 21).	The LGPD does not specifically mention direct marketing, but it is generally permitted if the controller satisfies the LGPD requirements for processing personal data. Article 10(I) states that personal data processing to promote the controller's activities may represent a legitimate interest for processing activities.	The GDPR provides data subjects with greater rights. The LGPD permits direct marketing with certain conditions.
<b>Information right</b>	Information right with broad content requirements (Articles 12 to 14).  For more on the GDPR's notice requirements, see <a href="#">Practice Note, Complying with the GDPR's Transparency Obligation to Data Subjects</a> .	Information right with more limited content requirements (Article 9).	GDPR is broader regarding required content but both LGPD and GDPR require a detailed and comprehensive privacy notice.



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<b>Access rights</b>	Right to access personal data, obtain certain information about the processing, and receive a copy of certain personal data on request (Articles 12 and 15).	Right to access personal data, obtain confirmation of processing, obtain certain information about the processing, access information from public and private entities with which the controller shared data, and receive a copy of personal data (Articles 18(I), (II), and (VII) and 19(I)).	GDPR and LGPD provide similar access rights, but LGPD requires controllers to comply with access requests within 15 days. GDPR allows 30 days for compliance.
<b>Erasure right, also called “right to be forgotten”</b>	Express right to request erasure of personal data in specific circumstances (Article 17).	Right to request erasure or anonymization of personal data in limited circumstances (Articles 16, 18 (IV), and 18(VI)).	GDPR provides data subjects with greater right.
<b>Rectification right</b>	Right to obtain rectification without undue delay or to complete incomplete personal data (Article 16).	Right to correct personal data or complete incomplete data (Article 18 (III)).	GDPR and LGPD provide similar rectification rights.
<b>Objection right</b>	Right to object to data processing in certain circumstances (Article 21).	Right to object to personal data processing if the controller relies on a legal basis other than consent and fails to comply with the LGPD (Article 18(2)).	Both GDPR and LGPD include an objection right but provide different grounds for exercising the right.
<b>Restriction right</b>	Right to restrict data processing in certain circumstances, such as when a data subject contests the data’s accuracy or while a processing objection is pending (Article 18).	Does not provide data subjects with an explicit processing restriction right. However, the LGPD gives data subjects the right to anonymize, block or temporarily suspend any processing operation that is: <ul style="list-style-type: none"> <li>• Unnecessary.</li> <li>• Excessive.</li> <li>• Unlawfully processed.</li> </ul> (Articles 5(XIII), 18(IV), LGPD.)	GDPR includes a restriction right while the LGPD does not explicitly provide data subjects with that right.



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<b>Data portability right</b>	<p>Right to data portability, which includes the right to:</p> <ul style="list-style-type: none"> <li>• Receive a copy of certain personal data from the controller in a commonly used and machine-readable format and store it for further personal use on a private device.</li> <li>• Transmit certain personal data to another controller.</li> <li>• Have certain personal data transmitted directly from one controller to another where technically possible.</li> </ul> <p>(Article 20(1) and (2).)</p>	<p>Right to data portability to another service or product provider, subject to secrecy obligations and under ANPD regulation (Article 18(V)).</p>	<p>Both GDPR and LGPD include a data portability right, but the GDPR provides more detail on that right.</p>
<b>Automated decision-making</b>	<p>Right not to be subject to a decision based solely on automated processing, including profiling, which has legal or other significant effects on the data subject, subject to certain exceptions (Article 22).</p>	<p>Right to request:</p> <ul style="list-style-type: none"> <li>• A review of decisions that affect data subject interests and that are taken solely on the basis of automated processing (Article 20).</li> <li>• Clear and adequate information about the criteria and the procedures used for the automated decision (Article 20(1)).</li> </ul>	<p>GDPR provides data subjects with greater rights to not be subject to certain automated decisions and provides more detail on when this right applies.</p>
<b>Data security requirements</b>	<p>Requires appropriate technical and organizational security measures to ensure a level of security appropriate to the risk (Articles 25 and 32).</p>	<p>Requires appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction, loss, alteration, or disclosure, or against all other unlawful forms of processing and provides that the ANPD may require minimum standards (Article 46).</p>	<p>Both GDPR and LGPD require appropriate security measures.</p> <p>GDPR highlights several appropriate security measures and includes more detailed requirements on data protection by design and by default.</p>

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<b>Data protection by design and default</b>	Required (Article 25).	<p>Requires controllers and processors to:</p> <ul style="list-style-type: none"> <li>Implement appropriate measures to ensure and demonstrate compliance with the LGPD's requirements (Article 6(X)).</li> <li>Adopt appropriate technical, administrative, and security measures to protect personal data from unauthorized access and from accidental or unlawful destruction, loss, alteration, communication, or any form of inappropriate or unlawful treatment, from the conception of the product or service until its execution (Article 46(2), LGPD).</li> </ul> <p>Requires controllers to structure their systems used for personal data processing to meet security requirements and standards of good practice and governance under the LGPD (Article 49).</p>	LGPD does not use the phrase "data protection by design and default" but includes requirements similar to the GDPR.
<b>Data breach notification</b>	<p>Controllers experiencing a data breach must notify:</p> <ul style="list-style-type: none"> <li>The relevant supervisory authority no later than 72 hours after the breach, unless the breach is unlikely to pose a risk of harm (Article 33).</li> <li>The data subject without undue delay if the breach poses a high risk of harm (Article 34).</li> </ul>	<p>Controllers must notify the ANPD and affected data subjects within a reasonable time, as defined by the ANPD, following the occurrence of any security incident that may involve risks or relevant harm to data subjects (Article 48).</p>	GDPR specifies a tighter timeframe for notification and specifies different harm thresholds for notifying supervisory authorities and individuals of a data breach.

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	GDPR	LGPD	Comparison
	The GDPR requires processors to notify the controller without undue delay when they become aware of a personal data breach (Article 33(2)).	ANPD <a href="#">Resolution CD/ANPD No. 15</a> (in Portuguese) establishes procedures for controllers to notify the ANPD and affected data subjects within three business days, starting from the date the controllers confirms a breach affecting personal data.	
<b>Data processor contracts</b>	A contract or other legal act that includes specified terms must govern processor relationships (Article 28(3)).	Does not explicitly require written agreements, but ANPD has issued <a href="#">guidance</a> (in Portuguese) recommending them.	GDPR imposes obligations that do not exist in the LGPD.
<b>Certifications and codes of conduct</b>	Recognizes codes of conduct and certifications as mechanisms to demonstrate compliance with the GDPR's requirements (Articles 40 and 42).	Encourages the adoption of industry codes of conduct and certification bodies (Articles 33(II) (d) and 35).	GDPR recognizes codes of conduct and certifications as a means of compliance, while LGPD only encourages their adoption.
<b>Cross-border transfers</b>	Prohibits personal data transfers outside of the EU unless an exception applies (for example, when the recipient country ensures an adequate level of protection, or the transfer is subject to appropriate safeguards) (Articles 44 to 50).	Prohibits cross-border transfers unless an exception applies (for example, when the recipient country ensures an adequate level of protection as defined by the ANPD or the organization satisfies certain conditions) (Articles 33 to 36).  ANPD <a href="#">Resolution CD/ANPD No. 19</a> (in Portuguese) addresses international personal data transfers and establishes guidelines for scenarios contemplated in LGPD Article 33 that require specific ANPD guidance, like adequacy decisions,	Both GDPR and LGPD restrict cross-border transfers unless exceptions or certain conditions apply.

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		specific contractual clauses, standard contractual clauses (SCCs), and binding corporate rules (BCRs). The Resolution does not mention seals, certifications, or codes of conduct, despite being referenced in LGPD Article 33(II)(d).	

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