



DATA PROTECTION IN THE PORTUGUESE HUB (I): ANGOLA

In recent years it is possible to point out two relevant trends in Portuguese speaking markets: 1) the ever increasing number of foreign companies that choose Portugal as its hub when tackling investments in places such as Brazil and Angola; 2) the new demands these companies must now cope with as a consequence of the former.

Corporate, tax and labor issues are usually front and center, but compliance with local and international privacy laws is never far away. In this newsletter we will address the Angolan data protection law and what this may mean to investors with subsidiaries.

Anyone considering Portugal as its HQ for investing in Angola will

already be familiar with the obligations imposed by Directive 95/46/EC, of October 24, and Law 67/98, of October 26, which transposes the former Directive. One of the main concerns will be the transfer of personal data to third countries which do not ensure an adequate level of protection, as per the Commission's interpretation of local data protection laws.

Angola has not obtained yet the Commission's approval, hence the flow of data from Portugal will depend on factors such as the data subject's consent or the implementation of binding corporate rules at a group level. It is essential to perform an adequate due diligence at this stage in order to establish the right procedures and, should there be a breach, the necessary remedies.

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From an Angolan perspective it is worth noting that the law is fairly new as the Data Protection Act (Law 22/11, of June 17, 2011) is a little over two years old. It is divided into five chapters (general considerations; processing of personal data; the Data Protection Agency (DPA); due process; final dispositions).

Pursuant to article 3, the law will apply to data controllers established or processing data in Angola, whether directly or by use of technical means situated in Angola. In this last case, the data controller must appoint a representative and notify the DPA of such appointment.

The Law contains specific provisions as regards the processing of data for both postal (article 18) and electronic (article 19) advertising purposes. The latter has established an opt-in system for data subjects, while the company must notify the DPA of its processing activity. However, there are three exceptions to the rule where

e-mail advertising is not restricted: 1) employees, representatives or collaborators of companies may receive publicity from their own company; 2) public administrations; 3) individuals who have already engaged in commercial transactions with the advertising company (although an opt-out system should be in place).

The data subjects' right to information provides additional safeguards to the ones laid down by the Directive, namely the right to be informed on the consequences of data collection without the data subject's consent as well as any further information to guarantee the fair processing of data.

Article 30 stipulates that data controllers must draft a code of practice containing procedures, regulations and safety measures applicable to data processing. Such a code is mandatory in some jurisdictions (notably Spain). Special care must be put to reflect an adequate level of protection.



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Outflow of data from Portugal is as much a concern as outflow from Angola. Article 34 determines when is it lawful to transfer data to third countries that do not ensure an adequate level of protection: a) with consent; b) in application of relevant treaties; c) for humanitarian purposes; d) for the execution of an agreement between the data subject and the controller; e) for the performance of a contract between the controller and third parties when concluded in the interest of the data subject; f) to protect important public interests; g) to protect vital interests of the data subject or when the data subject is physically or legally incapable of giving his consent; h) if the transfer is done from a register which according to laws or regulations is intended to provide information to the public; i) if the recipient

of the transferred data can ensure an adequate level of protection.

Penalties for companies are particularly heavy: the minimum fine being USD 195,000 while the maximum reaches USD 450,000. There are also criminal penalties as well as monetary ones. For instance, unlawful access or breach of duty of confidentiality can result in a prison sentence of up to 2 years.

Finally, as per article 63, any existing data processing must be notified to the DPA within two years since the Law is published. So whether you are already doing in business in Angola, or thinking about it, now's the time to brush up on your privacy policies and compliance duties.

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