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REVIEW

ENERGY

Data Centers and the Future of Brazil's Power Sector

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A More Selective STJ: What Brazil's New Reforms Mean for Litigants

► By **André Macedo de Oliveira, Sarah Roriz de Freitas Pimenta** and **João Pedro Ramos Soares Souza**

Recent reforms to the STJ go beyond procedural change. They are part of a broader effort to make the Court more selective in the cases it hears and more focused on its role as the principal interpreter of Brazil's non-constitutional law.

Brazil's Superior Court of Justice (STJ – *Superior Tribunal de Justiça*), the country's highest court for non-constitutional matters, is undergoing one of its most significant procedural transformations in recent years. Recent legislative and institutional reforms are making access to the Court more selective while reinforcing its role as the principal interpreter of federal legislation, including most private, commercial, procedural, administrative, and criminal law.

At the center of those changes is Law 15.484, enacted on 4 August 2026, which implemented the significance requirement introduced by Constitutional Amendment 125/2022 as a new admissibility threshold for appeals to the STJ. Combined with Amendment 53 to the Rules of Court, issued by the STJ on 1 July 2026, the legislation marks the beginning of a broader reform agenda that is likely to have a significant impact on litigants and practitioners appearing before the Court.

The new "significance filter" reflects a shift toward a more selective approach to appellate review. Parties seeking review by the STJ must now show not only that the lower court may have erred, but also that the legal issue has broader economic, political, social, or legal importance, going beyond the interests of the parties themselves. Although inspired by the "general repercussion" requirement for appeals to Brazil's constitutional court, the Supreme Federal Court (STF – *Supremo Tribunal Federal*), the new mechanism retains distinctive features of its own, including categories of cases in which significance is presumed.

The legislative reform has been accompanied by equally significant changes to the STJ's Rules of Court. Adopted in July 2026, the new Rules of Court introduce a range of procedural reforms, including changes to filing requirements, virtual hearings, case assignment, and the allocation of matters among the Court's panels and sections.

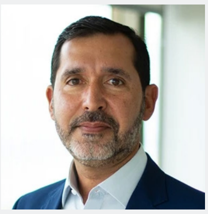
Viewed together, the legislative and procedural reforms represent more than a series of technical adjustments. They form part of a broader effort to improve how the STJ selects, manages, and decides cases. For litigants, the changes will affect both access to the Court and the conduct of appeals. For the STJ, they reinforce an institutional shift toward a more selective and structured model of adjudication.

At an institutional level, the reforms strengthen the STJ's role as the principal interpreter of

Brazil's federal legislation. The significance filter, however, remains a concept rather than a settled test. The STJ will have to define its practical contours through its decisions, much as the STF did with the general repercussion requirement.

Law 15.484/2026 introduced a new significance requirement for appeals to the STJ, while an amendment to the STJ Rules of Court reorganized the way cases are processed and decided. Together, the reforms mark a significant shift in practice before the Court.

For litigants and their counsel, the implications are equally significant. Demonstrating legal error will remain essential, but it will no longer be sufficient. Parties will also have to explain why a particular dispute warrants review by the STJ and why its importance extends beyond the interests of the litigants themselves. As a result, compliance with the new requirements will need to be built into litigation strategy well before an appeal reaches the Court. Taken together, the reforms point to a more selective and structured approach by the STJ and require an equally strategic approach from those seeking its review.



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Brazil's AI Regulatory Vacuum and the Need for *Festina Lente*

► By **Ian Bussinger**

Legislating for transformative technologies is difficult. The challenge is not only a matter of timing – neither too early nor too late – but also creating rules for something that is still evolving. There is no guarantee of getting it right, but the one unforgivable mistake is standing still. While Bill 2.338/2023 remains stalled in Congress, AI continues to reshape our world in decentralized and largely unsupervised ways. What is needed is legislative *festina lente*: urgency without haste, caution without paralysis.

A CEO asks an LLM how to avoid paying a USD 250 million earn-out. Is that a business strategy, or evidence that could later be used against him? A consultant delivers AI-generated work to a client, citing sources that do not exist. Who bears responsibility? An AI agent logs into your account and completes a purchase on its own. Who accessed the website: you or the software? A model is trained on a newspaper's archives or an artist's body of work. Was authorization required?

These are not hypothetical questions. In March of this year, a Delaware court reinstated executives of an acquired company and extended an earn-out period after finding that the buyer's CEO had used ChatGPT to devise a strategy for avoiding payment. That same month, Brazil's Superior Labor Appeals Court fined a company and its counsel for filing a pleading that cited non-existent precedents, apparently generated by AI. In August, a U.S. federal court allowed Perplexity's shopping agent to operate on Amazon, holding that, for legal purposes, the user, rather than the software provider, is the party accessing the website. And in New York, a court ordered OpenAI to turn over 20 million anonymized ChatGPT conversations in litigation brought by *The New York Times* and other newspaper publishers.

Yet many questions remain unanswered. When an AI agent buys or sells an asset, who is liable for its actions? How do fiduciary duties and oversight obligations apply? Who owns sensitive data processed by an external AI model? And who answers for an agent's autonomous actions?

Brazil still lacks a comprehensive legal framework for AI. Bill 2.338/2023 was approved by the Senate in December 2024 and has been awaiting action in the Chamber of Deputies since March 2025. The Senate's vice president has already acknowledged that the issue is unlikely to move before 2027. In a year of presidential and congressional elections, the political math is easy to see. The Bill presents both substantive and structural problems. It was introduced in May 2023, when AI and its use cases were markedly different from what we see today. The term "AI agent" (*agente de IA*) is used to describe human actors, such as developers, distributors, and deployers; with the exception of passing references to autonomous weapons and vehicles, the Bill does little to address agentic AI as it exists today.

The Bill's implementation schedule is a further challenge. Most prohibitions would take effect within 180 days, while the liability rules, risk-classification framework, and broader regulatory

architecture would not come into force until 730 days later.

More importantly, clarity on liability, a critical factor for investment and the responsible development of AI, arrives only after broad prohibitions and general rules that may create uncertainty. That sequencing is a product of both the Bill's conceptual framework and the state of AI development when it was drafted.

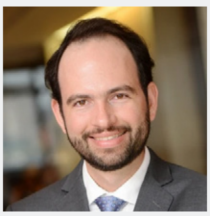
Other jurisdictions have faced similar challenges and adjusted course. Colorado enacted AI legislation in 2024, never brought it into force, and replaced the model in May 2026 before the law took effect. The European Union took a different approach. Rather than revising the framework itself, it postponed the application of the provisions governing high-risk AI systems under Regulation (EU) 2024/1689 until December 2027, while preserving the Regulation's overall architecture.

Regulating too early can be costly. In 1865, Britain required every motor vehicle to be preceded by a man carrying a red flag. The rule was designed for multi-ton steam-powered machines that damaged roads and startled horses. At the time, it made perfect sense. Twenty-one years later, the internal combustion automobile arrived. It posed none of those risks, yet inherited the same restrictions: a rule written for the technology that existed was applied to the one no one had anticipated. It took another 31 years to undo it.

Sometimes, however, delay is the greater risk. In 1925, after a series of deaths linked to tetraethyl lead, the United States suspended sales of leaded gasoline pending review. The committee appointed to investigate the issue complained that it lacked sufficient time for a thorough assessment, but found no "good reason" to ban the additive and recommended that further studies be conducted. They never were. Leaded gasoline returned to the market in 1926. The consequences proved catastrophic, yet tetraethyl lead remained in use for another 70 years before it was finally banned from American gasoline. The problem was not a lack of debate, but a failure to give the issue the time and investigation it warranted.

The lesson for Brazil is that we need to correct course. Regulatory vacuums do not remain empty. The Brazilian Data Protection Agency (ANPD), the Superior Electoral Court (TSE), the National Justice Council (CNJ), and the Digital Statute of the Child and Adolescent have already adopted regulations that address parts of the challenge, and the courts are likely to fill the remaining gaps. Yet none of them was tasked with creating a comprehensive framework for AI, and there is little coordination among them.

For companies that develop, deploy, or audit AI systems, there is no moratorium. They face a patchwork of agencies, fragmented legislation, sector-specific rules, and contracts drafted for a world in which decisions were never delegated to machines. The prudent course is to work with experienced legal counsel to identify where operations face genuine risk, before costs begin to mount. Waiting is a choice, and it comes at a price.



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Data Centers and the Future of Brazil's Power Sector

By **Bruna de Barros Correia** and **Roberta Alves Barbosa Teixeira**

The rapid expansion of data centers is creating new challenges for Brazil's power sector, requiring the country to align infrastructure development, grid planning, and regulatory certainty with growing digital demand.

Data centers are no longer solely a digital infrastructure issue. The rapid growth of artificial intelligence, cloud computing, the digital economy, and the electrification of a growing range of economic activities is driving demand for data processing and storage capacity, creating new pressures on energy infrastructure.

For the electricity sector, the impact of data centers goes beyond higher power consumption. They represent a new class of load, characterized by large power requirements, stringent reliability expectations and, often, significant geographic concentration.

Accommodating these characteristics will require regulatory and contractual frameworks capable of supporting the growth of the digital economy while preserving the reliability and efficiency of the power system.

The challenge, therefore, extends beyond securing adequate power supply. Deploying data centers at scale requires mechanisms capable of accommodating large, continuous loads with demanding reliability requirements. This has important implications for expansion planning, grid access, energy procurement models, and coordination among the various stakeholders involved.

Against this backdrop, regulatory developments will play an increasingly important role in supporting the expansion of digital infrastructure in Brazil. The reform of the electricity sector under Law 15.269/2025 reinforces the gradual liberalization of the power market and may facilitate long-term contracting arrangements between large consumers and generators, especially where renewable energy projects are involved.

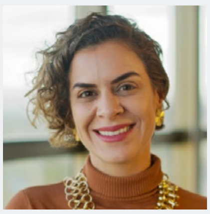
The recent introduction of Special Tax Regime for Data Center Services (Redata – *Regime Especial de Tributação para Serviços de Datacenter*) also contributes to creating favorable conditions for building new data centers and expanding existing facilities, by suspending federal taxes on the purchase and import of equipment, subject to compliance with sustainability, research, development and innovation requirements. Together with the developments in the electricity sector, Redata has the potential to reduce barriers to new projects, strengthening Brazil's position in the global competition for long-term investment in cloud computing and artificial intelligence infrastructure.

Energy procurement is only part of the equation. Grid connection and transmission planning are becoming equally important considerations. Depending on their location, data centers may require significant investments in transmission and distribution infrastructure, as well as greater certainty regarding access timelines, costs, and connection conditions. As projects grow in scale, coordination among developers, network operators, regulators, and planning authorities will be critical to avoiding bottlenecks and ensuring that risks are allocated efficiently among the parties involved.

The regulatory response, therefore, cannot be limited to expanding generation capacity. It must also support better transmission planning, enable shared connection solutions, allow network upgrades to move forward when backed by firm investment commitments, and consider how these new loads can contribute to the efficient operation of the power system.

Flexibility solutions, energy storage, and demand response can also help accommodate these new loads, particularly as the sector seeks to reconcile high levels of consumption and reliability with the operational realities of the power system. At the same time, contractual arrangements must remain closely aligned with the capabilities and limitations of the underlying network. Otherwise, energy procurement may become disconnected from transmission constraints and other operational risks. The goal should be to ensure that the growth of the digital economy is matched by the evolution of the energy infrastructure on which it depends.

The ability to address these challenges effectively could become an important competitive advantage for Brazil. With a predominantly renewable power mix, abundant energy resources, and growing interest from global investors, the country is well positioned to become a leading destination for digital infrastructure investment. Achieving that outcome will require regulatory predictability, effective planning, and efficient access to the grid. Projects are already being developed, financing is becoming available, and competition for these investments continues to intensify. Brazil's response must therefore be agile, focused, and well coordinated.



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Terrorist Designations Are Reshaping Compliance Risk in Brazil

► By **Anna Carolina Spilborghs, Katherine Cardoso de Souza** and **Mariana de Souza Carvalho**

The U.S. designation of the PCC and CV as terrorist organizations requires Brazilian companies to reassess compliance programs, due diligence procedures, and sanctions risk controls.

The United States has significantly expanded its approach to combatting transnational criminal organizations. Recent measures include the designation of Comando Vermelho (CV) and Primeiro Comando da Capital (PCC) as both Specially Designated Global Terrorists (SDGTs) and Foreign Terrorist Organizations (FTOs), as well as the addition of two Brazilian nationals and three Brazilian companies with ties to the PCC to the Specially Designated Nationals and Blocked Persons (SDN) list maintained by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC). Together, these developments signal an important shift in the way U.S. authorities approach sanctions, anti-money laundering, and broader compliance risks. They also reflect an enforcement policy that began with Executive Order 14157 and that increasingly relies on tools such as the Foreign Corrupt Practices Act and anti-money laundering laws in investigations involving criminal organizations.

These designations have far-reaching practical consequences that extend well beyond U.S.

borders. Frequent transactions in U.S. dollars will often be enough to attract U.S. jurisdiction. At the same time, financial institutions that depend on access to the U.S. financial system are likely to strengthen compliance controls, impose additional restrictions, and in some cases terminate business relationships because of sanctions-related risks.

Designation as an FTO also significantly increases criminal exposure under U.S. anti-terrorism laws. Under U.S. law, providing "material support" to a designated organization is a federal crime and can give rise to liability even where the underlying conduct occurs outside the United States. The breadth of the material-support concept is what gives U.S. anti-terrorism law its long reach. Material support extends well beyond the direct financing of unlawful activities and can include banking and payment services, specialized advisory services, training, lodging, and other forms of direct or indirect assistance.

For Brazilian companies, the new environment calls for a thorough review of compliance controls and third-party risk management procedures. Identifying exposure is particularly challenging because organizations such as the PCC and CV can infiltrate legitimate business activities and operate through broad networks of affiliates, intermediaries, and seemingly ordinary commercial relationships. The concern extends well beyond the individuals and entities that have been formally designated. As noted above, the effects of these sanctions can ripple through entire chains of business relationships, financing arrangements, and service providers connected, directly or indirectly, to sanctioned parties.

In response, Brazilian companies should prioritize measures that align with international best practices reflected in OFAC guidance. These include regularly updating risk assessments, strengthening sanctions-related policies and procedures, adopting more sophisticated screening tools, and verifying beneficial ownership information.

Companies should also continuously monitor and strengthen controls relating to payments, suppliers, and financial transactions, while ensuring that incident-response procedures are regularly reviewed and updated.

As economic sanctions, national security, and transnational crime become increasingly intertwined, companies are expected to exercise greater diligence in assessing the integrity of those they do business with, and in identifying risks arising from direct or indirect relationships with organizations subject to sanctions or terrorism-related designations.

Compliance is becoming an increasingly strategic tool for protecting organizations, supporting decision-making, and managing business risk.

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Brazil's Federal Revenue Service Steps Up Its Fight Against Counterfeit Goods

▶ By **Pedro Silveira Tavares** and **Camila de Oliveira Lanor**

New guidance strengthens border enforcement against counterfeit goods by placing greater reliance on the expertise of Brazil's Federal Revenue Service.

The entry of counterfeit and pirated goods through Brazil's ports and airports has long posed a significant challenge to effective intellectual property enforcement. Although Decree 6.759/2009 (the "Customs Regulations") provides mechanisms under which suspected infringing goods can be held by customs and ultimately forfeited, uncertainty remained regarding how those provisions should be applied in practice. In particular, it was unclear whether Brazil's Federal Revenue Service (RFB – *Receita Federal do Brasil*) could carry out the procedure on its own authority or whether a court order was required.

The resulting uncertainty increased costs, encouraged unnecessary litigation, and undermined the effectiveness of border enforcement measures against counterfeit and pirated goods, where speed is often critical.

To address this uncertainty, in December 2025 the RFB issued an interpretation bulletin, ADI 3/2025 (*Ato Declaratório Interpretativo*), stating that customs authorities may, on their own initiative, hold goods suspected of being counterfeit and then notify the trademark owner to submit evidence establishing a prima facie infringement. Once the violation

The focus is shifting from litigation to administrative enforcement. Rather than going to court to keep suspected goods under customs control, copyright and trademark holders can now present evidence of infringement directly to the Federal Revenue Service.

is confirmed, the customs authorities may declare the goods forfeit without the need for an order by the courts.

At first glance, the change may appear to be merely interpretive. In practice, however, ADI 3/2025 standardizes and strengthens the RFB's enforcement powers while formally moving Brazil toward a model more closely aligned with that adopted in jurisdictions such as the United States, where administrative action serves as the primary tool for preventing the entry of counterfeit goods.

Six months after its publication, the practical effects of ADI 3/2025 are becoming apparent.

The most significant is a shift in enforcement strategy for rights holders. In the past, efforts often focused on obtaining court orders to maintain customs holds on suspected infringing goods, which increased costs and contributed to the litigation of disputes that could potentially have been resolved through administrative procedures. Today, court orders play a much more limited role, and administrative enforcement has moved to the forefront. Rights holders are increasingly expected to provide technical evidence capable of demonstrating, prima facie, that goods are counterfeit or pirated, including trademark registration certificates, comparative analyses, authentication guides, and official catalogues. These materials now play a central role in shaping customs authorities' assessment of suspected infringements.

The changes in customs enforcement practices also require the private sector to adapt. Companies with well-established brand protection programs now have even greater incentives to organize and maintain evidence that can support administrative enforcement efforts. Importers and logistics operators, meanwhile, will need to strengthen compliance and traceability measures so that the origin and authenticity of goods can be demonstrated promptly.

Although this new approach is still taking shape and will depend on continued coordination between public authorities and the private sector, the first months following the issuance of ADI 3/2025 already point to a meaningful shift in the enforcement of intellectual property rights at Brazil's borders.

More than simply standardizing the interpretation of the Customs Regulations, the new rule strengthens border enforcement against counterfeit and pirated goods by placing greater reliance on the RFB's expertise and experience and reducing the need for court involvement in matters that can be resolved at the administrative level. In doing so, it brings Brazil closer to international best practices.

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Burnout Claims Require Proof of Causation

► By **Fernanda Nasciutti** and **Matheus Henrique Silva Xavier**

Determining whether burnout is work-related requires a careful assessment of the circumstances of the illness, particularly the conditions under which the employee performed their work.

One of the most significant developments in the World Health Organization's (WHO) 11th revision of the International Classification of Diseases (ICD-11) is the recognition of burnout syndrome as an occupational phenomenon. As Brazil moves forward with implementation of ICD-11, the effects of that recognition are becoming increasingly apparent in the growing number of claims by employees seeking to hold their employers liable for mental health conditions allegedly related to work.

This trend calls for caution on two fronts. In Brazil, employers must identify, assess, and manage psychosocial risks in the workplace, as required under Regulatory Standard 1 (NR-1), which was recently updated by the Ministry of Labor and Employment. At the same time, healthcare professionals and Labor Courts must exercise particular care before concluding that a condition is work-related, especially in cases involving burnout. Failure to do so risks trivializing an issue that is as important as mental health.

The value of a diagnosis or clinical assessment made by a treating physician is not in question. However, determining that a condition is work-related requires clear evidence of a causal link between the illness and the employee's working conditions. That determination must be based on the technical criteria established by the applicable medical regulations.

Such caution is necessary because mental illness is multifactorial and increasingly prevalent in modern life. Brazil's Ministry of Health, echoing the World Health Organization, observes that "mental health problems arise from collective conditions and require public policies, protection networks, improved living conditions, food security, and community support." WHO data point in the same direction. Brazil has the highest prevalence of anxiety disorders in the world, which only reinforces the point that psychological distress may arise from factors beyond the workplace.

The need for caution is also reflected in Resolution 2.323/2022, which sets out standards issued by Brazil's Federal Medical Council (CFM – *Conselho Federal de Medicina*) for physicians performing occupational health assessments. Under the Resolution, workplace conditions must be assessed before a causal link can be established between an employee's medical condition and their work activities. The Resolution expressly recognizes that evaluating the work environment, the organization of work, and the experience of other employees is essential to identifying the risk factors that may contribute to burnout. Only after such an investigation, conducted in accordance with the technical requirements set out in CFM Resolution 2.430/2025, can it be determined, from a medical point of view, whether a condition is directly related to work or whether its causes lie elsewhere.

The medical regulations make clear that burnout should not automatically be presumed to be work-related. A cautious approach is especially important because ICD-11 confines burnout to the occupational context and treats it as a diagnosis of exclusion, meaning that other possible mental health conditions must be ruled out first. Whether burnout is ultimately found to be work-related therefore depends on a careful assessment of the circumstances in which it arose, and particularly the conditions in which the individual performed their work.

The challenge is far from straightforward. Despite the availability of technical standards, Brazil's Labor Courts have generally been reluctant to undertake the detailed examination of workplace conditions that is essential to establishing causation in cases involving mental health conditions allegedly related to work. This creates uncertainty about how such claims will be assessed and risks trivializing burnout.

The rise in burnout-related litigation underscores the need for consistent criteria for determining whether a condition is work-related.

The safeguards serve a common purpose: ensuring that conditions genuinely related to work are correctly identified, without automatically attributing responsibility to employers whenever mental health issues arise. Achieving that balance is the real challenge. As attention to mental health in the workplace continues to grow, the goal must be to ensure that greater awareness does not come at the expense of the technical rigor required to determine whether a condition is truly work-related.

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ABNT NBR 10.004 Revised: A New Approach to Waste Classification in Brazil

By **Márcio Pereira, Fernanda A. Tanure** and **Marlus Oliveira**

The revision of Brazil's main waste-classification standard may alter regulatory obligations, compliance costs and waste-management strategies across a wide range of industries. Companies that generate, store, transport or dispose of waste, particularly hazardous waste, should begin assessing the potential impact of the new framework now.

Few technical standards have as many legal and regulatory implications in Brazil as ABNT NBR 10.004, the national standard issued by the Brazilian Association of Technical Standards (*Associação Brasileira de Normas Técnicas* – ABNT) for classifying waste as hazardous or non-hazardous. Because it is incorporated into environmental, mining and waste-management regulations at both the federal and state levels, changes to the standard can have direct legal and operational consequences for a wide range of businesses. The standard is referenced, among other frameworks, in the National Solid Waste Policy, regulations issued by the National Environmental Council (CONAMA), rules adopted by the National Mining Agency (ANM) for the classification of mining tailings and, in some cases, state waste-management legislation.

Published in 2024 and scheduled to take effect on 1 January 2027, the revised version of NBR 10.004 fundamentally changes the way waste is classified in Brazil. One of the most significant changes is the greater emphasis placed on the origin of the waste. Whereas laboratory analysis previously played the central role in the classification process, the first step is now to identify the waste in the General Waste List (*Lista Geral de Resíduos*). This extensive list often determines whether a material is hazardous based on its origin, under a single-entry classification system.

These changes are particularly significant for the industrial sector because waste classification directly affects the way waste must be managed, transported and disposed of. As a result, the reclassification of waste, as hazardous for example, may trigger additional regulatory obligations and increase operational and disposal costs.

In other words, laboratory assessment of characteristics such as flammability, reactivity, corrosivity, pathogenicity and toxicity becomes secondary and is generally required only when the waste cannot be identified in the General Waste List. Another important change is the introduction of Persistent Organic Pollutants (POPs) as a factor in the classification process.

Although the General Waste List serves as the starting point for classification, its classifications may be challenged where a technical study demonstrates that they are inappropriate for the waste in question. In other words, laboratory analysis, which previously formed the basis of the classification process, now plays a secondary role and is generally used only where the characteristics of a particular waste stream justify reassessing the general classification assigned by the List.

Under the revised standard, a detailed understanding of the production process becomes increasingly important. Because the classification process now places greater emphasis on the origin of the waste, companies will need to identify the source and composition of their waste streams with greater precision in order to assess whether reclassification may be warranted and to mitigate the risks associated with incorrect classifications. This is particularly important because waste is presumed to be hazardous until its characteristics have been determined.

The stakes are high. Classification as hazardous may trigger a range of regulatory obligations and significant additional costs. These may include revisions to environmental permits and their associated operational requirements, investments in new infrastructure and waste-management procedures, the engagement of

The same waste, generated by the same production process, may be reclassified as hazardous even though nothing has changed in the facility itself. Until the characteristics of the material have been determined, it is presumed to be hazardous, with all the obligations and costs that flow from that classification.

specialized service providers, environmental liability insurance requirements, registration with the National Registry of Hazardous Waste Operators and the preparation or revision of waste-management plans.

In some cases, reclassification may also affect environmental services agreements, established cost structures and even the economic viability of new projects or industrial expansions.

Although the revision of ABNT NBR 10.004 is a technical change, its practical consequences are likely to extend well beyond waste classification itself. As regulators incorporate the new standard, it may have direct implications for companies' environmental, operational and financial decision-making.

ABNT NBR 10.004:2024 will come into force on 1 January 2027. In the meantime, companies still have an opportunity to review their waste inventories and reassess existing classifications before environmental regulators begin applying the new framework. This transition period can be critical to identifying hidden liabilities, validating waste-management strategies and avoiding costly last-minute adjustments as the effective date approaches.

For this reason, companies in the industrial, mining, construction, chemical, metals, infrastructure, and basic sanitation sectors should begin assessing the potential impact of the new standard on their operations now. Early legal and technical reviews can help identify risks, estimate the investments that may be required, and develop appropriate compliance strategies.

The revised waste-classification framework will become mandatory on 1 January 2027, and environmental regulators are already focusing on its implementation. Close coordination between legal and technical teams will be essential to identify reclassification opportunities, mitigate regulatory risks and ensure a smooth transition to the new regime.

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Effective Protection, Not Mere Compliance: The ANPD's New Approach to Child Safety Online

By **Felipe Palhares** and **Fernanda Villela Viana**

Companies subject to the ECA Digital that understand the new level of expectation and invest early in robust governance structures will be better positioned to face scrutiny from both regulators and the public.

On 17 August 2026, Brazil's National Data Protection Authority (ANPD – *Agência Nacional de Proteção de Dados*) ordered a gaming platform to suspend its livestreaming feature for users in Brazil. The decision was one of the most significant enforcement actions taken under the new Digital Statute for Children and Adolescents (*ECA Digital – Estatuto da Criança e do Adolescente*).

When it came into force in March 2026, the ECA Digital established a new framework for protecting children and adolescents in the digital environment. The statute applies not only to products and services directed at minors but also to those likely to be accessed by them, and places responsibility for enforcement with the ANPD.

Whether the ANPD's decision was proportionate remains open to debate. The suspension was ordered in the context of an investigation launched after the Agency became aware of allegations that users had been encouraged to engage in self-harm or suicide through activities on the platform.

In its preliminary assessment, the ANPD found evidence suggesting that certain livestreaming features could pose significant risks to children and adolescents. In the Agency's view, the safeguards in place were not sufficient to prevent or mitigate those risks.

Based on that assessment, the ANPD's Inspection Department (SFI – Superintendência de Fiscalização) ordered the temporary suspension of the platform's livestreaming feature and similar video-sharing features for users in Brazil. The suspension will remain in place until the company can demonstrate that it has implemented technical safeguards, security measures, and governance processes that the Agency considers appropriate to address the identified risks.

The most significant aspect of the decision is not the suspension itself, but the legal interpretation underlying it. The ANPD addresses concerns about proportionality by making the measure conditional on the implementation of appropriate technical safeguards, security measures, and governance processes, and by emphasizing that the suspension is reversible.

The case offers an important glimpse into the ANPD's expectations regarding effective compliance with the ECA Digital. In its analysis, the Agency expressly states that a platform may violate the ECA Digital not simply because its service presents risks, but because the safeguards it has implemented may be insufficient to prevent, detect, and mitigate risks associated with the design and operation of the service.[1]

The standard adopted by the ANPD under the ECA Digital seems to be different from that found in many other regulatory regimes, where demonstrating accountability is often enough. Under the Agency's approach, compliance is inherently contextual and depends on the nature of the product or service and the specific risks it creates for children and adolescents. Encryption illustrates the point. A safeguard that may be highly effective in one context can become less protective in another if it operates as a barrier to measures needed to address identified risks. In such circumstances, the burden shifts to the platform operator to implement safeguards that can be shown to provide an equivalent or higher level of protection.

For technology companies, the ANPD's decision signals a need to rethink compliance when products or services are directed at children and adolescents or are likely to be accessed by them.

The implication is that companies cannot treat compliance with the ECA Digital as a standardized box-ticking exercise. The ANPD's approach goes beyond formal legal compliance to encompass the entire lifecycle of digital products and services, from design and development through deployment and operation. For companies subject to the ECA Digital, compliance is no longer a purely legal function. As the Agency itself explains, it is a *"preventive, continuous, and risk-based duty, the sufficiency of which must be assessed according to the functionalities offered and the severity of foreseeable harms."*[2]

For technology companies, the ANPD's decision signals a need to rethink compliance when products or services are directed at children and adolescents or are likely to be accessed by them. Demonstrating formal compliance or maintaining generic child-protection policies will no longer be enough. The focus is increasingly on whether safeguards are effective in practice and whether they adequately protect the best interests of minors.

The ANPD now expects companies to conduct structured risk assessments, document the

1. Nota Técnica nº 1/2026/CGF/SFI/ANPD
2. Nota Técnica nº 1/2026/CGF/SFI/ANPD. Our translation.

decisions underlying the design and operation of specific products and services, and implement safeguards proportionate to the risks identified. Those safeguards must also function as part of an integrated system capable of detecting, containing, and mitigating situations that may affect children and adolescents.

Companies subject to the ECA Digital that understand this new level of expectation and invest early in robust governance structures will be better positioned to face scrutiny from both regulators and the public. Although the challenge is complex, organizations that successfully meet this new standard will benefit not only from reduced regulatory risk, but also from the trust and credibility that come with demonstrating a genuine commitment to protecting children and adolescents online.

> The implication is that companies cannot treat compliance with the ECA Digital as a standardized box-ticking exercise. The ANPD's approach goes beyond formal legal compliance to encompass the entire lifecycle of digital products and services, from design and development through deployment and operation.

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