

ECUADOR: Data Protection Law Approved

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Jaime Mantilla Compte

Falconi Puig, Abogados

Quito, Ecuador

Data Protection Committee

Verifier



Monica Wolf

Wolf Mendez Abogados Asociados

Bogotá, Colombia

INTA Bulletins—Latin America Subcommittee

For the first time, Ecuador has a law specifically on data protection.

After a long road, Ecuador implemented a Data Protection Law on May 21, 2021, when the President ratified it, following prior approval of the National Assembly on May 10, 2021.

Regulations on this issue were previously contemplated in a general manner by the Constitution of 2008 and tangentially regulated in other laws, such as the Telecommunications Law, the Monetary and Financial Code, and the Law on Jurisdictional Guarantees and Constitutional Control, which established habeas data as the only enforcement mechanism for personal data. Habeas data is a legal remedy in Ecuador's Law of Constitutional Guarantees (Article 49), by which any citizen can file a judicial action requesting access to their own information handled by any third party, as well as to request the elimination, rectification, or actualization of such information.

The new law includes clear definitions of the different components, rights, obligations, and institutions that make up the data protection system. It also develops the preexisting constitutional rules, centering consent as the key pillar to process, communicate, or transfer data.

This law, inspired by the European Union's General Data Protection Regulation (GDPR), has extraterritorial applicability as well. It states that regardless of the nationality of the data processor or the place where data processing takes place, the law is applicable when the data owner resides in Ecuador and the processing

activities are related to the goods or services offered to the owner. This is true whether they are required to pay, or when the activities refer to their behavior, the latter insofar as it takes place in Ecuador.

Furthermore, the new law regulates numerous other factors, including: the timeline for data conservation; the data quality required for processing, data security, and responsibilities; international data transfer; and special circumstances such as data of minors (teens aged 15 and older can express their own consent) and the deceased. Perhaps most importantly, it establishes an administrative proceeding for enforcing rights before a specialized Administrative Control Authority (the Authority) that is entitled to apply penalties, without the necessity of filing a habeas data judicial action.

In this manner, the law establishes that data owners may file a claim before the Authority. In turn, the Authority must conduct a thorough investigation and can issue corrective measures. Also, on a case-by-case basis, the Authority can establish fines ranging from 0.1 percent to 0.7 percent of the amount of sales of the infringer prior to tax reduction in the case of minor offenses, and 0.7 percent to 1 percent in the case of serious offenses.

Also of significance, any data processing carried out prior to the entry into force of the law must be in compliance with its provisions within two years. The provisions related to corrective measures and the sanctioning regime also will enter into force in two years. However, the owner may be required to exercise the rights recognized in the law regardless of the entry into force of the sanctioning regime.

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