

GUEST EDITORS' NOTE

Privacy and Data Protection in Latin America: The Future of Privacy

I was extremely honoured when I received an invitation by Ceyhun Necati Pehlivan, Editor-in-Chief, and Wolters Kluwer, to join them as guest editor of this Latin American issue of the *Global Privacy Law Review*.

It is fantastic to have a specific issue dedicated to Latin America, with the possibility of reflecting our own way of interpreting fundamental rights such as privacy and data protection.

Latin America has been going through significant privacy and data protection changes during the last decade, and it is reasonable to expect that it will continue in that way in the upcoming years.

Some countries, as for example Argentina, Uruguay, and Colombia, have enacted privacy and data protection regulations many years ago, which are going through an update process (such as in Argentina or Chile). Some others, as for example Brazil, have enacted their data protection law in the last few years. The rest are discussing the enactment of their first privacy law, like for example Ecuador or El Salvador.

The year 2020 was very busy in terms of interpreting data protection regulations and their limits in connection with the processing of personal data for security and health purposes. The COVID-19 pandemic required intensive interpretation of the different laws, and a constant balance with other constitutional rights, such as the access to public information.

In that regard, we have seen many Data Protection Authorities in our region issuing guidelines and recommendations to bring some clarity on the processing of health data to fight the pandemic. Before the pandemic, many of these issues were more frequently seen by scholars in lectures and theory, than in practice.

For example, the Argentine Data Protection Authority issued guidelines regarding the processing of personal data during the pandemic; processing personal data in connection with temperature checks (directed particularly at retail stores); and processing of personal data for contact tracing. These kinds of guidelines proved very helpful for companies, and for privacy professionals counselling companies, to put in place better protocols that would meet local regulations.

In most countries, like in my home country Argentina, the general rule for processing personal data is the data subject's prior and informed consent. One of the exceptions to this general principle is that personal data can be processed when there is a legal obligation or when data is collected by the State based on its specific functions.

These exceptions to consent, particularly under health emergencies in several countries in our region, were useful as the legal basis for processing health data to combat COVID-19.

On a different note, what we also see – year after year – is a constant growth in professionals dedicated to privacy and data protection issues, which are mostly lawyers but also coming from other disciplines. We also note a constant increase in academic offers, including new dedicated courses addressing the complexity of privacy and data protection in a hyper-connected world. This, in turn, is helping raise the level of education and sophistication in Latin America, accompanying the sophistication of the regulations and of the authorities charged with enforcing compliance with the laws.

The latter is also fostered by the growth of the awareness citizens have regarding their data protection rights, something that we can see across the region. These citizens, the data subjects, are constantly demanding further respect of their rights by business and authorities. Data subjects now know what their rights are, and they want to enforce their informational self-determination.

As to the type of legislation, the majority of Latin American countries follow the line of thought that considers personal data protection as a human right, thus also following the European approach to privacy and data protection. In that connection, many of the Latin American legislations resemble in many ways the Directive 95/46/EC or the General Data Protection Regulation.

Latin America and the European Union (EU) being in tune in this way has had an important effect. Countries like Argentina, first (2003), and Uruguay, later (2012), were recognized by the EU as countries providing an adequate level of protection, allowing the free flow and transfer of personal data from the EU to these countries, without the need for any further safeguards. These

adequacy decisions had a clear economic impact in Argentina, triggering the establishment of call and data centres, providing the country with a competitive advantage for quite some time.

However, unlike the EU, Latin America's economic bloc, lacks harmonization between the data protection regulations of the different jurisdictions. This lack of uniformity is something that companies with regional businesses need, in order to focus their business in compliance with all applicable laws. There should be no doubt that a regional treaty addressing privacy and data protection would be a tool that could help better protect data subjects' rights, and at the same time fostering commerce.

All the above has been accelerated by the digital transformation which is a reality in the region and is still growing every year. The fact that most documents are

either digital or digitalized makes cross-border transfer of data the norm, which in practice results in the application of multijurisdictional regulations.

In conclusion, Latin America continues to go through dynamic changes, with regulations being enacted or updated, with a clear sophistication of data subjects, authorities, and data controllers.

It is my desire that the articles included in this issue serve as a stepping-stone to continue fostering a rich dialogue about global privacy regulations and developments, with a specific focus on the specific needs of Latin America.

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