Data protection issues from a global perspective

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Issues of discussion

- ❑ Data protection legislation standardization in Latin America;
- ❑ The adequacy on data protection in the Continent;
- ❑ Comparison between GDPR and LGPD, similarities and differences;
- ❑ The status of LGPD's implementation;
- ❑ The implementation and the Covid-19 pandemic;
- ❑ Measures of Policy and security in clouds applications (cross-border);
- ❑ GDPR and its influence in the world;

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Data protection in Latin America

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Data Protection regulations

- Since the beginning of the XXI century, the Latin American countries have been putting into effect regulations in data processing, in response to a global necessity introduced by the European Union with the Data Protection Directive (Directive 95/46/EC) and the Personal Information Protection and Electronic Documents Act (PIPEDA) in Canada;
- Since then, countries such as Chile, Mexico, Argentina, Uruguay, Colombia and Brazil have been establishing its laws regarding data protection and access to public data related by its citizens;
- With the establishment of the General Data Protection Regulation, the Latin American countries now have to review readapt its laws to a whole new level;

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Some examples of data protection legislations in Latin America after GDPR

LGPD, or Law 13.709/18 (Lei Geral de Proteção de Dados, or General Law on Data Protection in English) in Brazil

- Put into effect a whole new framework on data protection;

Regulation 47/2018, in Argentina

- Established the Data Protection Authority on Data Protection;

2018 — 2018 — 2018 — 2019

Law 21.096/2018 in Chile

- Established the Data Protection Rights of the data subject;

Law 13.853/19 in Brazil

- Introduction of the Brazilian Data Protection Authority;

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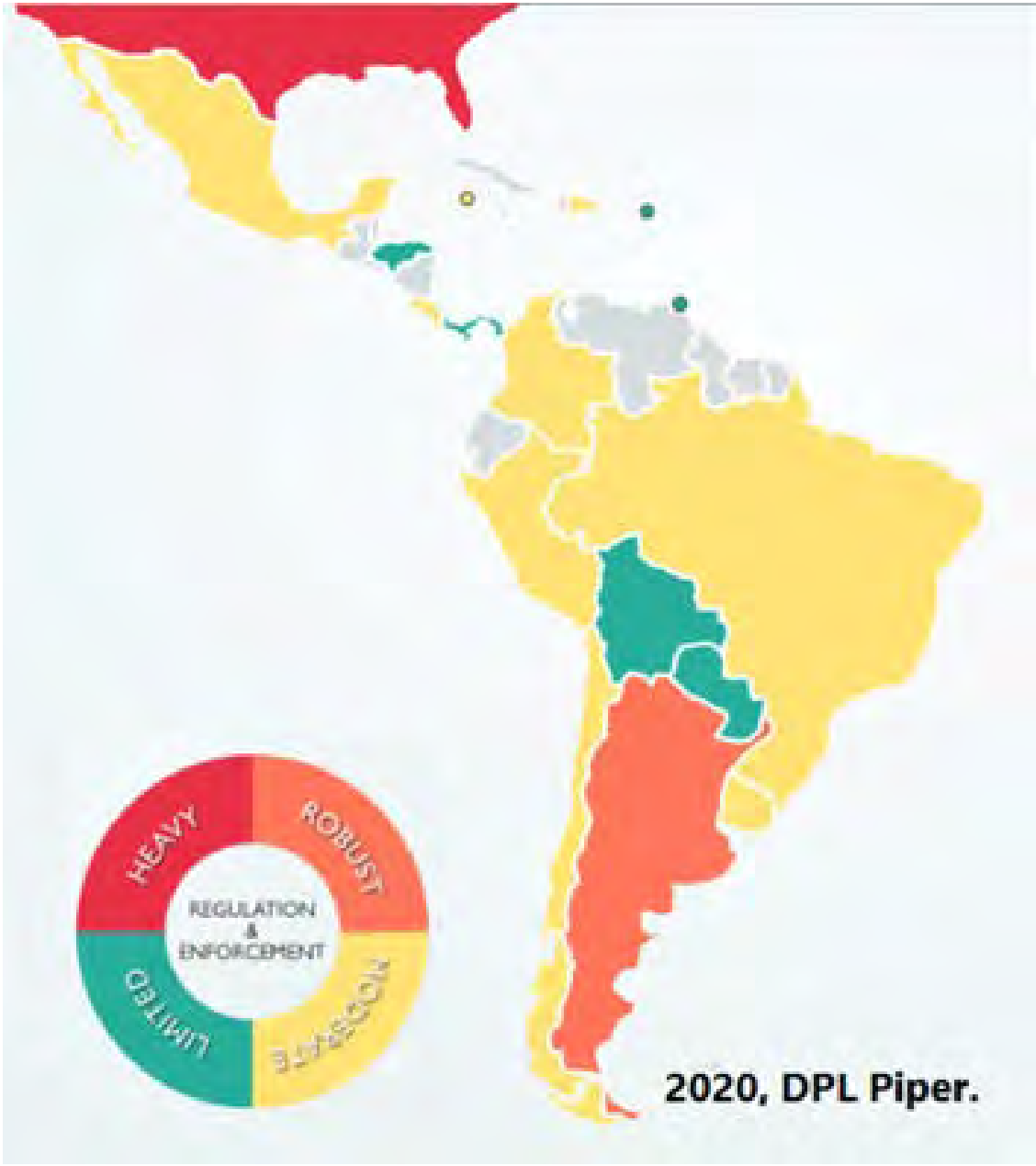
The current situation

- In general, data protection legislations are being implemented in all the countries of Latin America;
- The adequacy in relation to Europe or North America will take some time to be finished;
- Some countries already have a good level of legislation and legal action, like Brazil, Uruguay and Argentina;
- Other countries possibly will need more time in the future;
- The map in the right show a little bit of how is going the enforcement of data protection in the region (the map is from 2020 but didn't have any change until this year).



GDPR influence in Latin America

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Cloud Application and Security Policy Among States

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Data Transfer Cross-border in Latin America

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Data transfer in Argentina

Transfers and disclosures to third parties:

- Personal data may only be transferred for legitimate purposes of the transferor and the transferee, and generally with the prior consent of the data subject who must be informed of the transfer's purpose and of the transferee's identity. This consent may be rescinded.
- Consent is not required in the case of transfer of data regarding which consent was not necessary for collection. Also, it is not necessary in the case of transfer of data between state agencies, for purposes of performance of their respective activities, on in connection with health-related data, if the transfer is necessary for public health or emergency reasons, or for the performance of epidemiological studies, provided the identity of the persons to whom such data refer is reserved by means of adequate dissociation mechanism.

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Data transfer in Argentina

Cross-border transfers:

- The cross-border transfer of personal data is prohibited to countries or international or supranational organization which do not provide adequate protection to such data, unless:
- The data subjects expressly consents to that transfer
- The transfer is necessary for international judicial cooperation
- The transfer takes place as part of certain exchanges of medical data
- Bank or stock exchange transfers, in the context banking or stock exchange transactions
- The transfer takes place as provided in the context of international treaties to which Argentina is a party
- The transfer has as its purpose the international cooperation between intelligence agencies engaged in combating organized crime, terrorism and drug traffic

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Data transfer in Chile

- At present, the Law does not contain a specific provision in respect of international data transfers. However, the transfer of personal data outside the jurisdiction may be deemed as a use of data and would therefore require authorization and other requirements established by the Law.
- The general rules regarding data processing according to the Chilean Law also apply to international data transfers, particularly those regarding the authorization or consent of the data subject, the finality principle(personal data must be used only for the purposes they have been collected for, and those purposes, should be permitted by the Chilean legal system) and the informing of users of the potential communication to the public of the data. In addition, the fundamental rights of the data subject must be respected.
- No government notifications or approvals are required to transfer data internationally.

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Data transfer in Colombia

- The transfer of personal data occurs when the data controller or the data processor located in Colombia sends the personal data to a recipient, in Colombia or abroad, who is responsible for the personal data.
- Cross-border data transfer is prohibited unless the country where the data will be transferred meets at least the same data privacy and protection standards as those in Colombian regulation. This prohibition does not apply in the following cases:

  When the data subject has expressly consented to the cross-border transfer of data

  Exchange of medical data

  Bank or stock transfers

  Transfers agreed under international treaties to which the Colombia is a party

  Transfers necessary for the performance of a contract between the data subject and the controller, or for the implementation of pre-contractual measures, provided the data owner consented, and

  Transfers legally required in order to safeguard the public interest

Data transfer in Colombia

- The transmission of personal data takes place when the data controller provides personal data to a data processor, in Colombia or abroad, in order to allow the data processor to process the personal data on behalf of the data controller. The data subject's consent is required for the transmission of data, unless there is an adequate data transfer agreement in place between the data processor and the data controller.
- In this regard, Decree 1377 requires that the aforementioned agreement include the following clauses:

  The extent and limitations of the data treatment

  The activities that the data processor will perform on behalf of the data controller, and

  The obligations the data processor has to data subjects and the data controller

  The data processor has three additional obligations when processing personal data:

  Process data according to the legal principles established in Colombian law

  Guarantee the safety and security of the databases

  Maintain strict confidentiality of the personal data

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Data transfer in Mexico

- Domestic or international transfers of personal data may be carried out without the consent of the data subject where the transfer is pursuant to a law or treaty to which Mexico is party, or where it is necessary for medical diagnosis or prevention, healthcare delivery, medical treatment or health services management. In other cases, the data controller has to comply with the following requirements before transferring data to a data processor:

  data controllers must obtain the consent of the data subjects to transfer their personal data;

  the data controller must communicate the privacy notice to the data processor; and

  the data processor must assume the same obligations that correspondent the data controller.

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Data transfer in Uruguay

- Personal data can only be transferred to a third party:
- For purposes directly related to the legitimate interests of the transferring party and the transferee, and
- With the prior consent of the data subject
- However, such consent may be revoked. Additionally, the data subject must be informed of the purpose of the transfer, as well as of the identity of the recipient. The prior consent of the data subject is not necessarily required when the personal data to be transferred is limited to any of the following: name, surname, identity card number, nationality, address or date of birth.
- The purpose and proper identification of the transferee must be included in the request for consent addressed to the data subject.
- Evidence of the data subject's consent must be kept in the files of the data processor

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Data transfer in Uruguay

- The Act forbids the transfer of personal data to countries or international entities which do not provide adequate levels of protection (according to European standards). However, the Act allows international transfers to unsafe countries or entities when the data subject consents in writing to such transfer and when contractual clauses (i.e. data transfer agreement) are in place that require an adequate level of data protection. The data transfer agreement must provide for the same levels of protection which are required under the laws of Uruguay.

- In the case of an international transfer within a group of companies, Uruguayan laws establish that the international transfer is permitted without any authorization whenever the recipient branch has adopted a code of conduct that is duly registered with the local URCDP (Data Protection Authority of Uruguay). The international transfer of personal data between headquarters and their respective branches or subsidiaries is authorized when the headquarters and their branches have a code of conduct (such as an intercompany agreement) duly filed with URCDP.

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The implementation of the LGPD

- The Brazilian framework on data protection was initially approved in 2018;
- Due to the economic crisis of 2014 and the economic stagnation of 2018, the initial proposal for the Authority on Data Protection was rejected;
- Then, the new objective was establishing a new public segment for the Authority but with a minimal impact in the State resources;
- After that, a new draft regarding the ANPD was approved in 2019;

GDPR and LGPD: comparison and differences

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LGPD and GDPR: key points of comparison

LGPD x GDPR

- GDPR and LGPD have similar territorial scopes:
- They are applicable to all companies that offer goods or services to citizens in the European Union or in Brazil, respectively, regardless of where they are located. However, the LGPD claims wide applicability, even outside Brazil, in provisions that may be even more extensive than those of the GDPR.
- Both the GDPR and the LGPD qualify consent as the key element for companies to process personal data.

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LGPD x GDPR

- Both the LGPD and the GDPR guarantee the individual the right of access to their personal data. Likewise, holders can, at any time, request that the companies that collected their data carry out the portability, correction or definitive deletion of their information.
- The difference, in this regard, is in the period set for companies to offer access. While GDPR determines that companies have 30 days to respond to requests, LGPD offers only 15 days.

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LGPD x GDPR

- Another big difference between them concerns the processing of personal data for direct marketing purposes. GDPR grants data subjects the right to object, at any time, to the processing of their personal data for the purposes of profiling and marketing.
- The LGPD does not deal specifically with direct marketing and this may suggest implicit authorization, as long as the treatment follows the general rules applicable to consent, transparency and the rights of data subjects.

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LGPD x GDPR

- The sanctions to which companies are subject follow the same approach.
- The GDPR determines that, in the event of a data breach incident, there may be fines ranging from 10 to 20 million Euros or from 2% to 4% of the total annual revenue for the previous financial year, whichever is greater.
- The LGPD, in turn, establishes simple fines of up to 2% of the global revenue for the previous year up to R$ 50 million per violation.

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The Implementation and the Pandemic

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National Authority on Data Protection (ANPD)

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ANPD
Autoridade Nacional de Proteção de Dados

Aspects of ANPD

- Established in 2019, the ANPD or (National Authority on Data Protection – *Autoridade Nacional de Proteção de Dados* in Portuguese);
- Federal organism that will inspect the regulation and impose penalties on the processing agents that do not comply with the law;
- This government body will also regulate and approve frameworks of data protection implemented in Brazil;
- This body will be formed by a number of 23 representatives of public authorities and civil society, also having responsibilities for carrying out studies, debates and campaigns related to the subject of data protection.

Thank you!

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