



ALFARO
ABOGADOS

Buenos Aires
Argentina
Tel: (54-11) 4393-3003
Contact: Carlos E. Alfaro
cealfaro@alfarolaw.com

Argentina: A Bill updating the Data Protection Law was sent to Congress.

Data protection and privacy laws around the world are currently undergoing a general review and Argentina is not an exception.

Data protection is considered a fundamental right and is explicitly guaranteed in Argentina through the action of habeas data, provided for in Section 43 of the Argentine Constitution. Said provision was incorporated at the time of the constitutional reform in 1994. Subsequently, on October 2000, Law No. 25,326 on Data Protection (DPL) was passed and it entered into force the following year.

The DPL sets forth general data protection principles regarding data collection and storage, outlining the data owner's rights and setting out the guidelines for the treatment of personal data, the obligations of data holders (either data controllers or data processors), the rules for transfer of personal data, the creation of the controlling authority, penalties for the event of breach, and rules of procedure for the habeas data court remedy. It provides that both the persons in charge of a database and its users must adopt such technical and organizational measures as may be necessary to guarantee the security and confidentiality of personal data, in order to avoid a data breach.

The DPL was largely based on the European Union (EU) legislation, particularly the Data Protection Directive 95/463, which was in force at that time, and Spain's Organic Law 15/1999 of December 13 on Protection of Personal Data. This resulted in Argentina being the first American country to meet the data protection adequacy standard. Via the Commission Decision of June 30, 2003 of the European Parliament, the EU regarded Argentina as providing an adequate level of protection of personal data transferred from the EU. The 2003 EU Regulation remains valid.

Representative Offices
Not admitted to practice local law

New York
USA
Tel: (1-212) 698-1147
Contact: Liliana Arauz
larauz@alfarolaw.com

Beijing
China
Tel: +86 136 1173 7125
Contact: Soledad Matteozzi
smatteozzi@alfarolaw.com

Web Page: www.alfarolaw.com



In part, due to the fact that the EU had commented negatively on the lack of independence of the Argentine data protection authority -which at the time was the National Directorate of Personal Data Protection- it was later replaced by the Agency of Access to Public Information (AAIP, for its acronym in Spanish language), an autarchic and autonomous agency that operates within the President's Chief of Staff Office. Among other responsibilities, the AAIP is in charge of assisting individuals regarding the protection of their rights, receiving claims and carrying out inspections of companies to assess their compliance with the DPL.

Given that the DPL was conceived in a world with a young internet, at another juncture regarding the treatment and processing of personal data, on 2016 the Argentine data protection authority began working on a first draft of a new Data Protection Law. The draft was shared with the public, legal academics and representatives of the private sectors for comments and based on the feedback received, a second draft was prepared during 2017.

In this context, on March 2020, Bill No. 0070-D-2020 (the Bill) was introduced in Congress to modify the DPL. The Bill highlights the need to update the current law since it has become outdated in comparison to the technological advances of the digital era and the new international frameworks, especially in light of the passing of the European General Data Protection Regulation (GDPR).

The Bill revisits general concepts such as database, personal data and sensitive data, and incorporates new ones such as computerized data or cloud computing, biometric data, and genetic data.

In addition, it specifies that the processing of personal data of minors must be done considering the best interests of the child, in accordance with the Convention on the Rights of the Child.

Also, a major development is the inclusion of data breach notifications. The Bill provides that security incidents must be notified to the controlling authority within a reasonable time, given the circumstances of the case. Likewise, also provides for clear and conspicuous notification to the data subjects of the security breach that has occurred. Breaches must be documented, as well.

Another significant modification introduced by the Bill is the incorporation of the right to request the deletion of personal data if it is not in databases that have a public purpose.



The Bill includes two new special processing cases: personal data processing through drones, and personal data processing in the cloud.

Finally, the Bill replaces the current data protection authority. It creates the National Agency for the Protection of Personal Data, an autonomous body in charge of overseeing the DPL, within the scope of the Ministry of Justice and Human Rights. At the same time, it creates a Permanent Bicameral Commission to monitor the DPL.

Although it is not certain whether the Bill will be finally passed in Congress, Argentina will enact a new law -in line with the GDPR- in the medium term in order to maintain its status as a country with adequate level of protection from an EU perspective.

This article is intended to be a general summary of the law and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.