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## Ecuador: Updates on the data protection bill

The Commission on Sovereignty and International Relations of the National Assembly of Ecuador ('the Commission') sent, on 9 April 2021, the final report for the second debate ('the Report') on the Draft Organic Law for the Protection of Personal Data ('the Draft Law').



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In particular, the Report provides for amendments and comments in regards to the Draft Law. The Report has been sent to the National Assembly for consideration.

Jaime Mantilla, Partner at Falconi Puig Abogados, told OneTrust DataGuidance that "several changes have been implemented to the [Draft Law] after receiving observations of some Assemblymen regarding certain controversial topics and having additional work meetings with various representatives of the private sector, such as the Ecuadorian Association of Data Protection ('AEPD'), the Ecuadorian American Chamber of Commerce, and the Ecuadorian Chamber of Innovation and Technology among others. In addition, the

National Directorate of the Public Data Registry ('DINARDAP'), who presented the first draft of the [Draft Law], participated in these work sessions with additional feedback, as well as several international experts that have been consulted by the Commission since the beginning."

The Draft Law's material scope, under Article 2 of the Draft Law, was expanded following considerations presented by Assemblymen and the public to include exemptions from the application of the Draft Law to among others:

- personal usage of data;
- anonymised data;
- data used for journalistic activities; and
- data or databases established for the prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, carried out by the competent state agencies in compliance with their legal functions.

In addition, Mantilla highlighted, that "a clarification has been made in the sense that when data processing for a [variety] of purposes is based on the consent of the data owner, it will be necessary for the data processor to record that the said consent is granted for all those purposes. This small adjustment is pertinent since the original wording of the [Draft Law] could have mislead [organisations] that a general consent could be sufficient for a range of purposes, affecting the data subject's real will. Also, the Commission appropriately gave way for teenagers from the age of 15 and up to be able to grant, by themselves, consent to the processing of their personal data, provided that the purpose of such processing is clearly specified."

In regards to the territorial scope of the Draft Law, this includes the processing of personal data in Ecuador, when the data controller and / or data processor is domiciled in Ecuador or when services or products are offered to domestic residents. The Report notes that it is ideal to provide the Draft Law with an extraterritorial application 'in a way that guarantees the protection of personal data of Ecuadorian citizens at all times even when they are processed outside their territory.' Moreover, the Report outlines that such measures would prevent organisations from relocating outside of Ecuador to avoid the application of the Draft Law, when processing personal data, noting that 'when the [data controller] is located in a different jurisdictional territory, but collects or process[es] personal data of Ecuadorian citizens, [citizens] have guarantees that [the Draft Law] allows [the] clear [identification of] which actors and which enforcement mechanisms of the [Draft Law] would be in force and with it, provide users, companies, and authorities clear avenues of redress'.

In regard to penalties, Mantilla outlined that "the original [Draft Law] established fines in case of infringements which were clearly excessive for a struggling Ecuadorian economy. By general request they have been significantly reduced. For minor offenses, the fine is now of 0.1% to 0.7% of the amount of sales of the infringer prior to tax reduction[s], and in case of serious offenses 0.7% to 1%. [Previously, fines were between

3% to 9% for minor offenses and 10% to 17% for serious offenses, so this amendment is clearly beneficial for all data processors, especially for startups and SMEs who were clearly threatened [by] bankruptcy situations in case of infringements."

Finally, and as mentioned above, the Draft Law has been sent to the National Assembly for the second debate to take place, and there is still a chance that during this debate additional amendments to the Draft Law could be made, which would need to be voted on for their inclusion into the final text of the Draft Law. Moreover, Mantilla concludes that 'the political environment is favorable towards the [Draft Law]; the National Assembly considers this an essential regulation, so it is most likely to be approved. Furthermore, the current Assemblymen are interested in having the debate within this month to conclude their work on the matter prior to handing over their duties, since elections took place on 7 February 2021 and new Assemblymen will take over on 24 May 2021. Nevertheless, it is still uncertain when the debate [will] take place.'

**Alexander Fetani** Privacy Analyst

afetani@onetrust.com

Comments provided by:

**Jaime Mantilla Compte** Partner

jmantilla@falconipuig.com

Falconi Puig Abogados, Quito

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