**Report on the comparative study between the EU’s General Data Protection Regulation and the RIPD’s “Standards for Personal Data Protection for Ibero-American States”**

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**1. Introduction/short overview**

The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 “on the protection of natural persons with regard to the processing of personal data and on the free movement of such data” (General Data Protection Regulation – GDPR) has meant globally and so far the most powerful instrument in terms of protection of personal data. Not only because it contains the principle of extraterritoriality application, but because most of the Occidental legislation that followed it largely replicated its provisions and some even went further and extended it to other areas to which the GDPR does not apply (for example, the Mexican law on the protection of personal data held by obligated subjects of 2017 extended the right to portability of personal data to the public sector even though the GDPR does not apply to such area).

Precisely in this direction, the Ibero-American Data Protection Network (RIPD, after its acronym in Spanish), an association of all Ibero-American national (and some subnational) personal data protection guarantor bodies, approved several documents since 2003 (when it was founded in La Antigua, Guatemala), focusing the harmonization of the ibero-american incipient regulations on personal data protection. For example, the RIPD adopted in 2007 the Guidelines for Harmonization of Data Protection in the Ibero-American Community, taking as a starting point the “Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data”. With the adoption of these Guidelines, a ‘harmonized framework’ of reference for the national regulatory initiatives that arose in the region in data protection matters was established.

Most recently, and after the approval of the GDPR in 2016, the RIPD adopted in 2017 the “Standards for Personal Data Protection for Ibero-American States” a document that takes the GDPR as its main model, and undoubtedly constituted progress in the search for solutions and specific provisions that could be applied regardless of differences between existing models of data protection and privacy. The approved text attempts to respond to one of the pillars of the strategy agreed by the RIPD in November 2016 in Montevideo, which is reflected in the RIPD 2020 document: “the aim is to promote and contribute to the strengthening and adaptation of regulatory processes in the region, through the elaboration of guidelines that serve as a parameter for future regulations or for the revision of existing ones”.

In this sense, the Ibero-American Standards constitute a set of guidelines that may contribute to the issuance of regulatory initiatives for the protection of personal data in the Ibero-American region, which encompasses those countries that do not have these regulations yet; or, if it were the case, they may serve as reference for the modernization and updating of existing legislation.

The research that is proposed to be carried out precisely aims to make a comparative analysis of both regulations and investigate to what extent these standards, with the passing of the brief years that have elapsed since their approval, have been received in the laws, in the bills or in the decisions of the data protection guarantor bodies of the Ibero-American countries that make up said network.

**2. Human rights impacted/addressed/covered**

Beyond the fact that it could be said that there is only one human right involved in the object of this study (the right to personal data protection, recognized since 2000 as an autonomous right by the Charter of Fundamental Rights of the European Union), the truth is that this right is one whose eventual violation impacts on a large number of human rights to which it provides coverage through the rights and principles that were created precisely to guarantee those “traditional” human rights.

As a matter of fact, the GDPR contains the next rights and principles:

1. Principles: a) Lawfulness, fairness, and transparency; b) Purpose limitation; c) Data minimization; d) Accuracy; e) Storage limitation; f) Integrity and confidentiality, and g) Accountability.

2. Rights: a) Right of access; b) Right to rectification; c) Right to erasure; d) Right to be forgotten; e) Right to data portability; f) Right to object and g) Right not to be subject to a decision based solely on automated processing.

The main idea of the research is to compare the European and Ibero-American regulations regarding the regulations and implementations that have been in place since the approval of said instruments.

**3. Challenges in implementation/adoption**

Briefly, it can be said that the main challenges for the adoption and future implementation of the rights and principles recognized by both regional instruments in the Ibero-American sphere -more specifically for the case of the Ibero-American countries located on the American continent-, lie in the still immature data protection culture in many countries; in the lack of clear predisposition and commitment in many political spheres to introduce rules that generate obligations and protective rules that can be claimed; in the still very current culture of opacity; and in the fear of the economic costs that each country may incur in adopting the central principles of data protection and some of the control mechanisms that are inherent to these new regulations if it is intended to effectively confront the harmful effects that the new disruptive technologies may cause (for example, the creation of powerful and independent control bodies, the recognition of the figure of the data protection officer, etc.).

**4. Short analysis with a comparative segment on similar initiatives elsewhere**

Both the GDPR and the RIPD’s standards recognizes similar but not exactly the same rights and principles (for example, the right to be forgotten was not introduced in the RIPD’s standards). But with the approval of these Standards, the RIPD has an essential tool to rigorously address the follow-up and support of future legislative developments in the Region, since the Ibero-American Standards are a normative model that: a) Responds to the national and international needs and demands required by the right to personal data protection, in a society where information and knowledge technologies become increasingly important in all the tasks of everyday life; b) includes the best national and international practices in this area; c) proposes a series of standards flexible enough to facilitate their adoption among the Ibero-American States, without in any way contravening their domestic law, in such a way that this document is a living and viable reality in the Ibero-American region which benefits the holders; d) guarantees an adequate level of protection of personal data in the Ibero-American region, with the aim of establishing no barriers to their free circulation within the Ibero-American States and, consequently, favouring commercial activities between the region, as well as with other Economic regions.

In short, the work carried out by the entities that make up the RIPD, which has finally led to the approval of the aforementioned Standards, constitutes a concrete experience of cooperation which, in our opinion, can be very useful for other organizations. Therefore, these standards are at the disposal of all entities and professionals who can benefit from them, in order to most effectively ensure the possible exercise and protection of the right to data protection in both the Ibero-American region as well as in an international context.

As far as I know there are no other regional initiatives that that exactly matches the efforts carried out by the RIPD in its work to produce soft law norms for the region, although of course many governmental and non governmental organizations have issued recommendations, standards and rules tending to the global homogenization of regulations on the protection of personal data, for example the Guidelines for the Protection of Privacy and the Transboundary Movement of Personal Data of the Organization for Economic Cooperation and Development (OECD); the Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data and its Protocol; The Privacy Framework of the Asia-Pacific Economic Cooperation Forum; and the Regulation of the European Parliament and Council on the protection of individuals with regard to the processing of personal data and the free movement of such data. And by the way, these instruments were also taken into account when developing the aforementioned standards.

**5. Recommendations**

The main recommendation that can be given initially lies in capitalizing, for the Ibero-American countries, the European experience in terms of both the personal data protection and the promotion of the free but safe and controlled data circulation, in order to simultaneously promote the beneficial use of such data.

In this line of reasoning it must be said that since we face a fairly homogeneous and universal phenomenon (since the data circulates all over the world almost without regard to borders and the most used applications are also of global use) a regulation as most homogeneous as possible in order to protect more efficiently the said rights and principles must be adopted, and that in order to achieve this result, beyond the differences of each country, it will be necessary to “copy and paste” as much as possible from those European standards -and even from some European national regulations adopted after the GDPR as a result of its entry into force-, and precisely this research will be focused in determine if the Ibero-American states are aligning themselves and to what extent with current international standards on the matter.