

Jurisdiction	<i>Republic of Ecuador</i>
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* We are planning to put the information on our website so that the viewers can reach out to you, directly, and if you don't mind, we will include the above contact information in the report. You may have more than one contact person.

Questionnaire

I. Law concerning protection of personal information

- i. Does your country have a general law concerning the protection of personal information in the **private sector** at the present or in the near future?

The Ecuadorian Constitution determines the general legal regulation to personal data protection and privacy legislation. The protection is guaranteed only for personal data of persons. Ecuador does not protect companies' or entities' "personal" information.

Besides constitutional protection, the Organic Law on Personal Data Protection ("Ley Orgánica de Protección de Datos Personales", in Spanish), was approved on 21 May 2021. Upon publication in the Official Registry, the Law is in force since 26 May 2021.

This Law is a significant step for the correct regulation of the digital economy we currently live in, and establishes the principles for processing personal data, the rights of the data subjects, the obligations of the parties and the restrictions applicable for collecting and using such data.

Ecuador is joining a list of countries with novel regulations in this area, which provide an adequate standard of protection, aligning with the European regulation. It is important to note that the Law provides a two-year period of adaptation; only from May 2023, penalties can be imposed.

Current legal situation in Ecuador:

The National Secretary of the presidency is discussing and reviewing a second regulation that will complement the Organic Law on Personal Data Protection, such regulation is not approved

yet.

- ii. Does your country have a general law concerning protection of personal information in the **public sector** at the present or in the near future?

As mentioned above, both the Constitution and the Law will regulate personal information in the public and private sectors. Public institutions also must comply with the mandates of the law.

- iii. Does your country have laws concerning protection of personal information **which apply in individual (specific) sectors** at the present or in the near future? (If yes, please describe outline.)

Ecuadorian legislation has different provisions that mandate regarding the use of personal information, within certain specific sectors and conditions. Below you will find a brief outline:

- 1. The Constitution of the Republic of Ecuador:*** According to article 92, any person, shall have the right to know of the existence and to access the documents, genetic data, banks or personal data files and reports that about itself, or about its assets, are recorded in public or private entities, in material or electronic format.

The data subject will also have the right to know the use made of them, their purpose, the origin and destination of personal information and the time of validity of the file or database. The persons responsible for the personal data banks or files may disseminate the information filed with the authorization of its owner or the law. The person who owns the data may request from the person in charge free access to the file, as well as the updating of the data, its rectification, elimination, or cancellation. In the case of sensitive data, whose file must be authorized by law or by the owner, the adoption of the necessary security measures. If a request is not met, the data subject may raise a claim before a judge and may sue for the damages caused. Habeas Data constitutional action is a swift and easily accessible remedy in Ecuador. All first level judges in Ecuador are deemed as competent constitutional judges for such cases.
- 2. Organic Integral Criminal Code:*** The Ecuadorian Criminal Code determines, in article 178, that the violation of privacy, without a consent or legal authorization to access, intercept, examine, retain, record, reproduce, disseminate or publish personal data, data messages, voice, audio and video, contained on computer media, private communications or reserved from another person by any means, will be sanctioned with jail between one to

three years. Additionally, article 179 regulates the violation of secrecy in information in general.

Article 476 determines that a Judge will order the interception of communications or computer data upon substantiated request of the prosecutor, when there are indications that are relevant to the purposes for an investigation and the measure is suitable, necessary and proportional, in accordance with certain rules.

Article 310 regulates the disclosure of financial information, considering it an offense when it has been declared as reserved by the governing body of public finances, which generate unfavorable economic conditions for the State. Sanctions range between three to five years.

Finally, article 229 determines that the person who, for his own benefit or that of a third party, reveals recorded information, contained in files, archives, databases or similar means, through or directed in electronic, computerized, telematic or telecommunications, materializing voluntary and intentional violation of secrecy, privacy and privacy of the people, will be sanctioned with penalty imprisonment from one to three years. If this conduct is committed by a public servant, employees or internal bank employees or institutions of the popular and solidarity economy that perform financial intermediation or contractors, it will be sanctioned with a custodial sentence of three to five years.

3. Company Law

Art. 458.- The Superintendence of Companies and Securities will establish the policies and the way in which the companies that are under their control must deliver the information to the Credit Registry of the National Public Data Registry System.

The companies regulated by the Superintendency of Companies and Securities will provide only to the Credit Registry of the National Public Data Registry System the records data of the information referring to the credit history. It is forbidden to give this information to any other institution other than those determined in this Law.

4. Telecommunication Law

Article 22.- Rights of subscribers, customers and users. To receive annually, free of charge and electronically, an updated subscriber guide of the fixed telephony service, electronic,

issued by the contracted service provider. All subscribers shall have the right to appear in said directories and to a free national information service about your contents. Likewise, subscribers will have the right that your personal data be excluded free of charge from these guides.

Article 23.- Obligations of subscribers, customers and users. Comply with the registration obligations or identity record, such as providing your personal identification data associated with the line or telephone number, in accordance with the regulations issued in this regard.

Art. 77.- Interceptions. Interceptions may only be carried out when there is an express order from the competent judge, within the framework of an investigation of a crime or for reasons of public safety of the State, in accordance with the provisions of the law and following due process. In case of legal interception, the service providers must provide all the information required in the interception order, including the personal data of those involved in the communication, as well as the necessary technical information and procedures for decompression, deciphering or decoding in case the communications object of the legal interception have been subject to such security measures. The contents of the communications and personal data obtained as a result of a legal interception order will be subject to the confidentiality protocols and rules established by the current legal system.

Where all of the answers to the question of I.(i), (ii) and (iii) is “no”, please skip to IV.

II. The basic information of the regulation concerning protection of personal information.

- i. Please fill in the blanks below about all the law concerning personal information mentioned at I..(please add a reply column as necessary,)

The title of the law : *Constitution of the Republic of Ecuador*

① The definition of “Personal Information”	<i>Does not provide a specific definition.</i>
② The scope in which the law applies	<i>Constitution applies to all Ecuadorian residents, as well as private and public sectors, since it is the norm with the highest rank in the Country. It provides a general regulation for the protection of personal data of individuals, as a freedom right.</i>
③ The territorial scope	<i>Applies to the territory of Ecuador</i>

④ URL (please provide the URL officially posted by the government, English page is preferred, if available)	https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf
⑤ The effective date *	20-10-2008

* If the law has been amended, please fill in the effective date of the amended law.

The title of the law : *The Organic Law on Personal Data Protection* (“*Ley Orgánica de Protección de Datos Personales*”, in Spanish).

① The definition of “Personal Information”	<i>Data that identify or make identifiable a natural person, directly or indirectly.</i>
② The scope in which the law applies	<p><i>Applies to all personal data, contained in any format and whether it is automated or not.</i></p> <p><i>The Law will not be applicable to: data used in the performance of family or household activities, data of deceased persons, anonymized data, data used for journalistic activities, among others. Personal data the processing of which is regulated in specialized rules of an equal or higher hierarchy in matters of natural disaster risk management, and State defense and security. Data or databases established for the prevention, investigation, detection or prosecution of criminal offenses or the enforcement of criminal penalties, carried out by the competent state organizations in the fulfillment of their legal functions. Data that identify or make identifiable a legal entity.</i></p>
③ The territorial scope	<p><i>Without prejudice to the regulations established in international instruments ratified by the Ecuadorian State dealing with this matter, this Law will apply when:</i></p> <ol style="list-style-type: none"> <i>1. The processing of personal data is carried out in any part of the national territory.</i> <i>2. The controller or processor of personal data is established in any part of the national territory.</i> <i>3. The processing of personal data of data subjects who reside in Ecuador is carried out by a controller or processor not established in Ecuador; where the processing activities are related to: (1) the offering of goods or services to such data subjects, irrespective of whether a payment is required, or (2) the monitoring of their behavior as far as their behavior takes place in Ecuador; and</i> <i>4. National legislation applies to the processing of personal data by a controller or processor not established in the national territory, by virtue of a contract or the existing regulations of public international law.</i>

④ URL (please provide the URL officially posted by the government, English page is preferred, if available)	https://www.telecomunicaciones.gob.ec/wp-content/uploads/2021/06/Ley-Organica-de-Datos-Personales.pdf
⑤ The effective date *	26-05-2008

* If the law has been amended, please fill in the effective date of the amended law.

The title of the law : *Organic Integral Criminal Code*

① The definition of “Personal Information”	<i>Does not provide a specific definition, but includes personal data in the elements of intimacy.</i>
② The scope in which the law applies	<i>The Organic Integral Criminal Code regulates the application of criminal procedure and sanctions to every and all criminal conducts; it includes personal data as an element of intimacy, which is protected from any unauthorized divulgation. Criminal faults are sanctioned with jail.</i>
③ The territorial scope	<i>Applies to the territory of Ecuador</i>
④ URL (please provide the URL officially posted by the government, English page is preferred, if available)	https://www.defensa.gob.ec/wp-content/uploads/downloads/2021/03/COIP_act_feb-2021.pdf
⑤ The effective date *	03-02-2014

* If the law has been amended, please fill in the effective date of the amended law.

The title of the law : *Companys' Law*

① The definition of “Personal Information”	<i>Does not provide a definition.</i>
② The scope in which the law applies	<i>The companies regulated by the Superintendency of Companies and Securities will provide only to the Credit Registry of the National Public Data Registry System the records data of the information referring to the credit history. The Law is applicable mainly to private companies that are regulated by the Superintendency, developing specific provisions for the processing of credit data.</i>
③ The territorial scope	<i>Applies to the territory of Ecuador</i>
④ URL (please provide the URL officially posted by the government, English page is preferred, if available)	https://portal.compraspublicas.gob.ec

⑤ The effective date *	10/12/2020 (Last amendments)
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* If the law has been amended, please fill in the effective date of the amended law.

The title of the law : *Telecommunications law*

① The definition of “Personal Information”	<i>Does not provide a definition.</i>
② The scope in which the law applies	<i>Telecommunications Law is applicable to private and public companies that offer services and goods within the telecommunications sector, which is regulated as a strategic sector by the Constitution of Ecuador. The Law develops rights of subscribers, customers, and users, including provisions for the protection of their personal data collected through the service.</i>
③ The territorial scope	<i>Applies to the territory of Ecuador</i>
④ URL (please provide the URL officially posted by the government, English page is preferred, if available)	https://www.telecomunicaciones.gob.ec/wp-content/uploads/downloads/2016/05/Ley-Org%C3%A1nica-de-Telecomunicaciones.pdf
⑤ The effective date *	2-02-2015

* If the law has been amended, please fill in the effective date of the amended law.

ii. If there are any special instructions about the laws, please describe them.

Detailed explanation is above

III. OECD Privacy Principles

i. If there are any provisions of law which embody each OECD Privacy Principle in your country, please describe the outlines.

<https://www.oecd.org/sti/ieconomy/oecdguidelinesonthe protectionofprivacyandtransborderflowsofpersonaldata.htm>

Below, we include detail of the privacy principles determined by Article 10 of the Ecuadorian Data Protection Law:

a) **Lawfulness.** *Personal data must be processed in strict adherence to and compliance with the principles, rights and obligations established in the Constitution, international instruments, this Law, its Regulations, and other applicable regulations and case law.*

b) **Fairness.** *The processing of personal data must be fair. Therefore, it must be clear to the*

data subjects that personal data concerning them is being collected, and processed.

*c) **Transparency.** The processing of personal data must be transparent.*

Therefore, any information or communication relating to this processing must be easily accessible and easy to understand and must use clear and plain language.

*d) **Purpose.** The purposes of processing must be determined, and communicated to the data subject; personal data cannot be processed for purposes other than those for which they were collected.*

*e) **Relevance and minimization of personal data.** The personal data must be relevant and limited to the extent strictly necessary to achieve the purpose of the processing.*

*f) **Proportionality of processing.** The processing must be appropriate, necessary, and not excessive in relation to the purposes for which the data have been collected or the very nature of the special categories of data.*

*g) **Confidentiality.** The processing of personal data must be devised on the basis of due confidentiality and secrecy.*

*h) **Quality and Accuracy.** The personal data that are subject to processing must be accurate and where necessary, kept duly up to date, so that their veracity is not altered.*

*i) **Storage.** The personal data will be stored for no longer than is necessary to achieve the purpose for which the data are processed.*

*j) **Personal Data Security.** The controllers and processors of personal data must implement all appropriate and necessary security measures.*

*k) **Demonstrated and Proactive Responsibility.** The controller of personal data must demonstrate that it has implemented personal data protection mechanisms.*

*l) **Application in favor of the Data Subject.** In case of doubt regarding the scope of the legal or contractual provisions applicable to personal data protection, the judicial and administrative officers will interpret and apply the provisions in the sense most favorable to the data subject.*

*m) **Independence of Control.** For the effective exercise of the right to the protection of personal data, and in compliance with the State's obligations to protect rights.*

Once the local principles have been outlined, we link them to the principles determined in the OECD guidelines.

(a) Collection Limitation Principle

This principle means that there should be limits on the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject.

Principles provided within the Ecuadorian regulation, as defined above: a) Lawfulness; b) Fairness; d) Purpose; and, e) Relevance and minimization of personal data.

(b) Data Quality Principle

This principle means that personal data should be relevant to the purposes for which they are to be used, and, to the minimum extent necessary for such purposes, should be accurate, complete and kept up-to-date.

Principles provided within the Ecuadorian regulation, as defined above: e) Relevance and minimization of personal data; f) Proportionality of processing; and h) Quality and Accuracy.

(c) Purpose Specification Principle

This principle means that the purposes for which personal data are collected should be specified not later than at the time of the data collection and the subsequent use limited to the fulfilment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.

Principles provided within the Ecuadorian regulation, as defined above: c) Transparency; b) Fairness; and, d) Purpose.

(d) Use Limitation Principle

This principle means that personal data should not be disclosed, made available or otherwise used for purposes other than those specified in accordance with (c) Purpose Specification Principle, except:

- i) with the consent of the data subject; or
- ii) authorized by law.

Principles provided within the Ecuadorian regulation, as defined above: c) Transparency; b) Fairness; and, d) Purpose.

Additionally, the processing activities will be legitimate and lawful if they meet any of the following conditions:

- 1) *The data subject has given consent to the processing of their personal data for one or more specific purposes;*
- 2) *It is carried out by the controller in compliance with a legal obligation.*
- 3) *It is carried out by the controller by court order; in observance of the principles of the Law;*
- 4) *The processing of personal data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; derived from a competency attributed by a rule with the rank of law, subject to compliance with the international human rights standards applicable to the matter, compliance with the principles of the Law and the criteria of legality, proportionality and necessity;*
- 5) *To take steps at the request of the data subject prior to entering into a contract or in order to perform contractual obligations pursued by the personal data controller, personal data processor or by a legally authorized third party;*
- 6) *To protect the vital interests of the data subject or of another natural person, such as his or her life, health or safety;*
- 7) *To process personal data which is held in publicly available databases; or*
- 8) *To satisfy a legitimate interest pursued by the controller or by a third party, provided such interest is overridden by the interests or fundamental rights of the data subjects under the provisions of the Law.*

(e) **Security Safeguards Principle**

This principle means that personal data should be protected by reasonable security safeguards against such risks as loss or unauthorized access, destruction, use, modification or disclosure of data.

Principles provided within the Ecuadorian regulation, as defined above: g) Confidentiality; and, j) Personal Data security.

(f) **Openness Principle**

This principle means that there should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available for establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and address of the data controller.

Principles provided within the Ecuadorian regulation, as defined above: c)

Transparency; h) Quality and accuracy; and, k) Demonstrated and proactive responsibility.

(g) Individual Participation Principle

This principle means that an individual should have the right:

- i) to obtain from a data controller, or otherwise, confirmation of whether or not the data controller holds data relating to him;
- ii) to have communicated to him, data relating to him within a reasonable time; at a charge, if any, that is not excessive; in a reasonable manner; and in a form that is readily intelligible to him;
- iii) to be given reasons if a request made under subparagraphs (i) and (ii) is denied, and to be able to challenge such denial; and
- iv) to challenge data relating to him and, if the challenge is successful to have the data erased, rectified, completed or amended.

- *The data subject has the right to be informed in accordance with the principles of fairness and transparency.*
- *The data subject has the right to know and obtain from the controller, free of charge, access to all his or her personal data without having to present any justification.*
- *The data subject has the right to obtain from the controller the rectification and updating of his or her inaccurate or incomplete personal data.*
- *The data subject has the right to have the controller erase his or her personal data when: 1) The processing does not comply with the principles established in the Law; 2) The processing is not necessary or relevant for the purpose; 3) The personal data have achieved the purpose for which they were collected or processed; 4) The period for keeping the personal data has expired; 5) The processing affects fundamental rights or individual freedoms.*
- *The data subject has the right to object to or deny the processing of his or her personal data.*
- *The data subject has the right to receive their personal data from the controller in a compatible, up to date, structured, commonly used, interoperable and machine-readable format, preserving its characteristics; or to transmit it to other controllers.*

(h) Accountability Principle

This principle means that a data controller should be accountable for complying with measures which give effect to the principles stated above.

Principles provided within the Ecuadorian regulation, as defined above: k) Demonstrated and proactive responsibility.

ii. If there are any sectors in which any laws exclude the application of each OECD Privacy Principle, please describe the outline.

- i. Collection Limitation Principle
- ii. Data Quality Principle
- iii. Purpose Specification Principle
- iv. Use Limitation Principle
- v. Security Safeguards Principle
- vi. Openness Principle
- vii. Individual Participation Principle
- viii. Accountability Principle

There are no specific provisions that that exclude the application in any sector.

IV. Data Localization and Government Access

In your country, are there any systems having an impact on the rights of data subjects such as comprehensive government access (e.g. limitation on the authorities' access to personal data for investigation purposes, and the safeguard is the attorney-client privilege) to personal data or **Data Localization (e.g., rules requiring domestic installation and storage of servers and data)**? If yes, please describe them.

Access to personal data for investigation purposes will only be allowed when a legal order has

been granted by a competent judge, within certain limitations that are clearly described under principles of suitability, necessity and proportionality. This is consistent to constitutional protections of privacy rights and Constitutional Court rulings on the matter.

The judge will order the interception of communications or computer data upon substantiated request of the prosecutor, when there are indications that are relevant to the purposes of the investigation and the measure is suitable, necessary and proportional, in accordance with the rules.

There are no requirements regarding data localization under the LOPDP. However, the IP law states that all data related to national security and data that the Government considers as relevant, must be located in Ecuador.

For public entities that use software services that include data localization, their service providers must comply with international security standards and any data related to national security or strategic sectors shall be hosted in servers located in national territory.

Strategic sectors are determined in our Constitution, and are: energy in all of its forms, telecommunications, non-renewable natural resources, transport refining of hydrocarbons, biodiversity and genetic heritage, radio frequency spectrum and water.

V. The Data Protection Authority

If there is the data protection authority, please write down the name and address of the authority

Currently Ecuador does not have an authority. The competent regulator or governmental authority to supervise/enforce is being created. It will be a Superintendency of Data Protection. The Personal Data Protection Authority will be responsible for coordinating and regulate public and private sector entities.