

# **Building Sovereign and Integrated Data Governance, from Latin America to the G20**

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This Special Issue originates from the Call for Papers organized at the occasion of the Computers, Privacy and Data Protection Conference Latin America (CPDP LatAm) 2024.<sup>1</sup> CPDP LatAm has established itself as the leading platform for multistakeholder debates on data governance in Latin America. In light of Brazil's presidency of the G20 in 2024, the meeting was dedicated to "Data Governance: From Latin America to the G20" and was organized as an official side-event of the T20, the G20's think tank group.

One of the key outcomes of the conference was to highlight the growing connection between data governance and digital sovereignty. Particularly noteworthy is the emergence of a positive understanding of digital sovereignty as the capacity to "comprehend the functioning of digital technology, to know how to develop it, and to regulate it effectively in accordance with one's own values."<sup>2</sup> Seen under this light, data governance plays a crucial role in enabling individuals to be both individually and collectively sovereign over their data: individuals must be guaranteed informational self-determination as a foundation of their data sovereignty.<sup>3</sup>

However, reconciling informational self-determination with the development of AI systems based on massive scraping of personal data—whose legal bases remain highly questionable and whose data processing occurs in a worryingly opaque manner—proves to be extremely challenging. In this context, it appears exceedingly difficult to achieve the transparency and accountability that should characterize all data processing activities. It is also entirely understandable that, at this particular historical juncture, data regulators are at the center of attention. These authorities bear immense responsibility, playing a crucial role not only in guiding our technological development, but also in establishing fundamental guardrails for the evolution of our democracies and society as a whole.

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<sup>1</sup> The Outcome Report of CPDP LatAm 2024 can be accessed at <https://cpdp.lat/relatorio-de-resultados-cpdp-latam-2024/>

<sup>2</sup> Luca Belli. (2023). Building good digital sovereignty through digital public infrastructures and digital commons in India and Brazil. G20's Think20 (T20). <https://is.gd/BDCXss> ; Min Jiang, and Luca Belli (Eds). Digital Sovereignty from the BRICS Countries: How the Global South and Emerging Power Alliances Are Reshaping Digital Governance. Cambridge University Press. (2024)

<sup>3</sup> Luca Belli, Walter B. Gaspar, Shilpa Singh Jaswant. Data sovereignty and data transfers as fundamental elements of digital transformation: Lessons from the BRICS countries. Computer Law & Security Review Volume 54, September 2024. <https://doi.org/10.1016/j.clsr.2024.106017>

It is both normal and necessary that a broad spectrum of stakeholders is increasingly demanding that such regulators be more active, deliver more, and adopt a clearer and more assertive stance. We need them, and their work is fundamental to achieving digital sovereignty.

### **Becoming more strategic with data, toward a Latin American approach**

The protection of personal data is an essential pillar of data governance. However, we must also adopt a more strategic approach in our relationship with data, truly regarding it as one of our most valuable assets, playing a vital role in national development.

The G20 presented an excellent opportunity to underscore the need for integrated and coherent data strategies, capable of recognizing that data governance is not solely about personal data protection, but also about leveraging the value of data in a cooperative way, fostering so-called Free Data Flow with Trust<sup>4</sup>. To ensure that the value of data is harnessed more equitably and sustainably, the inclusion of all sectors becomes a fundamental element. Thus, we must be more strategic with data to be more inclusive, and we must be inclusive to be more strategic. We must also ask ourselves whether, as individuals and as nations, we are achieving the best possible conditions regarding the use and governance of our data. This does not appear to be the case.

Perhaps one reason is that Latin American countries are not negotiating conditions collectively, as a regional bloc, but rather in a fragmented and entirely disorganized manner. We must acknowledge that, aside from Brazil and perhaps Mexico, no actor in the region possesses the size or capacity to be a significant player in global data governance. Even less so in the field of AI.

A regional approach to data governance is strategic for a sustainable and sovereign technological development in Latin America. Indeed, the establishment of a coherent and homogeneous normative and institutional framework grounded in fundamental rights could yield not only substantial advances in terms of rights, but also enormous benefits in research, development, trade cooperation, and the facilitation of sustainable regional data transfers.

We are at an extremely important historical moment, in which the region must act in a more coordinated fashion and assert our rights and the digital development we desire. For this reason, during CPDP LatAm,

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<sup>4</sup> G20. G20 Osaka Leaders' Declaration. Osaka. 29 June 2019. Available at [https://www.mofa.go.jp/policy/economy/g20\\_summit/osaka19/en/documents/final\\_g20\\_osaka\\_leaders\\_declaration.html](https://www.mofa.go.jp/policy/economy/g20_summit/osaka19/en/documents/final_g20_osaka_leaders_declaration.html) This lemma has subsequently been translated into an OECD policy objective, as eloquently showcased by the organization's website <https://www.oecd.org/en/about/programmes/data-free-flow-with-trust.html>

a Proposal for an Inter-American Convention on Informational Self-Determination and the Processing of Personal Data<sup>5</sup> was launched.

The idea is simple. Most countries in the region already have data protection laws. In other words, personal data protection is a choice already made by Latin American nations. Therefore, we can be ambitious and propose an instrument for regional integration on data governance. In fact, not only can we, but we truly ought to have such ambition, considering recent jurisprudential developments in the region.

In March 2024, the Inter-American Court of Human Rights published its decision in the case *CAJAR v. Colombia*, highlighting that the American Convention on Human Rights gives rise to an autonomous right to informational self-determination, requiring the adoption of necessary regulations to implement mechanisms or procedures that guarantee this right. Regional harmonization is no longer merely a romantic ideal: it should be a common objective of public policy.

### **Promoting legal reforms for strategic and sovereign data governance**

Another key perception at the conference was the need to update the existing legal framework in order to better suit the complex regulatory and technological environment in which we find ourselves. Specifically, three buckets of reforms were identified as instrumental to promoting a more strategic and sustainable governance of data and AI: data spaces, researcher access to data and data intermediary organizations.

The first phenomenon refers to the creation of common data spaces at the national or regional level, where regulators create the conditions for safe spaces where the data can be found, accessed and used more effectively whilst ensuring the continuous fulfilment of our rights and freedoms. This concerns both infrastructure and governance norms and mechanisms that enable regulatory oversight and facilitate inter-institutional collaboration among various competent authorities, whose mandates are relevant to the specific type of data processing that is being promoted. The European “Data Spaces” provide an example that may be a useful reference for constructing Latin America’s own approach- for instance, drawing on its specific cooperative needs, ambitions and regulatory requirements.

Second, we can seek to broaden social participation in the data governance ecosystem by regulating and expanding data access for research institutions. Bills like 2630/2020 and 2338/2023 in Brazil contain specific provisions that provide this opportunity, but must be complemented by regulation defining who qualifies as a researcher, what types of research are legitimate, and how to verify their compliance with the

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<sup>5</sup> Belli, Luca Brian, Ana Mendoza, Jonathan Palazzi, Pablo Andrés Remolina, Nelson. Una Propuesta de Convención Interamericana Sobre Autodeterminación Informativa, Tratamiento Y Circulación De Datos Personales. 2024.<https://cpdp.lat/cdpd-latam-2024-discussion-paper/>

law and general legal principles. This connects with another professional figure increasingly necessary in our interconnected and complex world: the “auditor,” and the need for institutions and training in this regard. Figures like this appear to be increasingly needed in a co-regulatory environment where both public authorities and data subjects have limited capacity to provide meaningful oversights.

Thus, a third bucket of reform is the creation of a regulatory framework that recognizes different types of data intermediaries: from agents who assist data subjects in exercising their rights and controllers in managing such requests in a standardized manner (thus generating efficiency and avoiding security failures)<sup>6</sup>, to collective data destination entities with varying degrees of participatory governance, such as cooperatives and data trusts<sup>7</sup>. This is a reflection of the fact that data empowerment is not merely a matter of individual control: it is important to ensure collective control, especially over the risks and externalities produced by certain processing activities.

As an example, consider Bill 234/2023, currently before the National Congress, which proposes the creation of the Brazilian data monetization ecosystem: on the one hand, the bill offers some suggestions that could be positive for individual empowerment, such as the possibility of prohibiting the default use of personal data by companies providing digital services and the right to compensation in exchange for any authorization. On the other hand, in its current form, it risks producing undesirable effects, such as increasing inequalities between those who can and cannot afford to protect their own privacy, thus generating even greater dependence on these services and exacerbating the dynamics of surveillance capitalism. These are complex issues that society must grapple with and necessitate robust deliberation processes, not decisions made in isolated form by government officials, politicians or diplomats in the pursuit of their own mandates. This multi-stakeholder conference can provide a good starting point to kickstart reflections and stimulate those processes to coalesce at both national and regional level.

## **What to expect from this special issue**

This Special Issue contains three peer-reviewed articles, an invited essay and a book review. It begins with the essay « Data Governance in Latin America: An Increasing Alignment with the G20 », authored by UN Special Rapporteur Ana Brian, which reviews the evolution of privacy and data protection with a special lens on Latin America. This essay outlines important challenges for interoperability and coherence in the region, such as digital inequality, institutional capacity, privacy culture and the lack of

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<sup>6</sup> Núcleo de Estudos em E-Commerce, Proteção de Dados em Marketplaces no Brasil: Uma Análise empírica. Available at [https://diretorio.fgv.br/sites/default/files/arquivos/final\\_relatorio\\_-\\_protecao\\_de\\_dados\\_em\\_marketplaces\\_no\\_brasil.pdf](https://diretorio.fgv.br/sites/default/files/arquivos/final_relatorio_-_protecao_de_dados_em_marketplaces_no_brasil.pdf)

<sup>7</sup> Nicolo Zingales. Data Collaboratives, Competition Law and the Governance of EU Data Spaces (July 31, 2021). in I. Kokkoris and C. Lemus (ed.), Research Handbook in Competition Enforcement (Edward Elgar), Available at SSRN: <https://ssrn.com/abstract=3897051> or <http://dx.doi.org/10.2139/ssrn.3897051>

legal harmonization. Nevertheless, it offers positive reflections for the future on the prospects for alignment with the G20's objectives on data governance.

The first academic article in this special issue continues on the trajectory of the regional dimension, providing an overview of the intersection of data privacy and open data across a number of jurisdictions. In "Access To Public Information and Personal Data Protection: How Do They Dialogue?", Cecilia Galván, Renato Berrino Malaccorto and Joaquin Herrero, stress that the effectiveness of the protection afforded by the respective legal framework in these two areas depends not only on institutional synergy between the tasks of securing access to public information and protecting personal information, but also on the active involvement of civil society in oversight and advocacy. To facilitate that, it is important to ensure continuous, timely and free access to information; and it is in this sense that the authors suggest that deadlines to respond access to information requests ought to be shorter than those for the enforcement of data subject (ARCO) rights, as they are less demanding in terms of systematization and identity verification. Ultimately, the article argues that data transparency and personal data protection can be mutually reinforcing when properly regulated, and cautions that governmental use of data-intensive technologies without proper consent or transparency can exacerbate the tension between these two dimensions of data governance.

The second article is entitled "Is that a fully automated decision? Comparing ADM regulation under EU and Brazil's data protection law". In it, authors Lucas Anjos and Diego Machado provide a comparative overview of the legal rules in the EU GDPR and its Brazilian equivalent (the LGPD) applicable to automated decision-making (ADM). Particularly, they illustrate the text and the evolution in the understanding of the legal framework in the EU, and contrast that with the lack of guidance in respect of important aspects of applicable rules in Brazil: for instance, the lack of definition over the concept of "decision" or "solely automated", the controversy surround the existence of a right to explanation and of what constitutes meaningful explanatory information. Nevertheless, the authors notice a certain influence of EU cases and scholarship, despite the notably different structure of the article conferring data subject rights against ADM in Brazil, which is not configured as an outright prohibition and does not specify the right to obtain human review. This shows the potential of comparative work as a source of inspiration, while also providing a powerful reminder on the importance of an active role by the data protection authority to reduce inconsistencies developed through diverse judicial rulings on the matter.

The third article, "The ViaQuatro and Metropolitan Company of São Paulo FRT Cases: Implications of Different FRT Tasks", by Pedro Zucchetti Filho, is a deep dive into a specific technology that involves automated decision-making and its appreciation by two landmark judicial rulings in Brazil. These cases offer teachings about the implications of data processing in the three phases of Facial Recognition

Technology (verification, identification, and categorization) and the importance of constitutional principles in serving as a bulwark against misuse of this technology, be it for commercial or for investigative purposes, independently from the actual identification of individuals. At the same time, the uncertainty surrounding the application of open-ended principles evidences the need for a more specific framework for the safeguarding of personal data in the context of public security, particularly to minimize the notable risks of fallibility, intrusiveness and function creep.

Finally, the Special Issue concludes with a review by Filipe Medon of the book *“Transferência internacional de dados pessoais na América Latina: rumo à harmonização de normas”*, by Luca Belli, Ana Brian Nougères, Jonathan Mendoza Iserte, Pablo Andrés Palazzi and Nelson Remolina. This review closes the circle by reminding the harmonization potential of existing international treaties on human rights and data protection, if properly enforced, particularly in the recipient countries of personal data transfers. From a practical standpoint, this requires a setup where supervisory authorities bear full autonomy and can act impartially and independently. Bearing in mind the need for authorities to keep up with demands of enforcement, rule-making and advocacy, this may reinforce the importance of more hybrid arrangements, such as audits, certification and other mechanisms to guarantee compliance.

## Conclusion

In conclusion, the insights shared through the CPDP LatAm process underscored the urgent necessity for Latin America to adopt a coordinated, sovereign, and sustainable approach to data governance. The region stands at a pivotal juncture, where the convergence of technological advancement, regulatory evolution, and societal expectation demands a more strategic and inclusive vision.

Embracing informational self-determination as a fundamental right, Latin American nations are uniquely positioned to lead by example, fostering robust legal frameworks and innovative governance models that balance individual rights with collective interests. The proposal for an Inter-American Convention on Informational Self-Determination reflects a maturing regional consciousness and a readiness to engage proactively on the global stage. On top of enshrining into the Convention fundamental rights and principles relating to data processing, Latin American States can move forward in harmonized manner in the fine-tuning of their legal frameworks to address the challenges and opportunities of an increasingly data-driven technological environment.

However, realising this vision requires not only legislative harmonization but also the cultivation of participatory mechanisms, interdisciplinary expertise, and a culture of accountability and transparency. As the region navigates the complexities of AI, data monetization, and cross-border data flows, its

commitment to equity, inclusiveness, and human dignity must remain paramount. The legacy of thought leaders such as our beloved Danilo Doneda continues to inspire collaborative efforts, ensuring that Latin America's data governance journey is both principled and forward-looking, capable of shaping a digital future that is just, resilient, and genuinely sovereign. The event included a tribute to Danilo, one of the founders of CPDP LatAm, and the conferral of the Danilo Doneda Award is dedicated—an award recognizing the best publications at CPDP LatAm. Fostering cooperative work and research aimed at positively impacting public policy is something Danilo taught us. This is why we continue the effort we began together, with enthusiasm and commitment to building a culture of data protection in Brazil and throughout Latin America.

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