

Latin American Data Privacy Law

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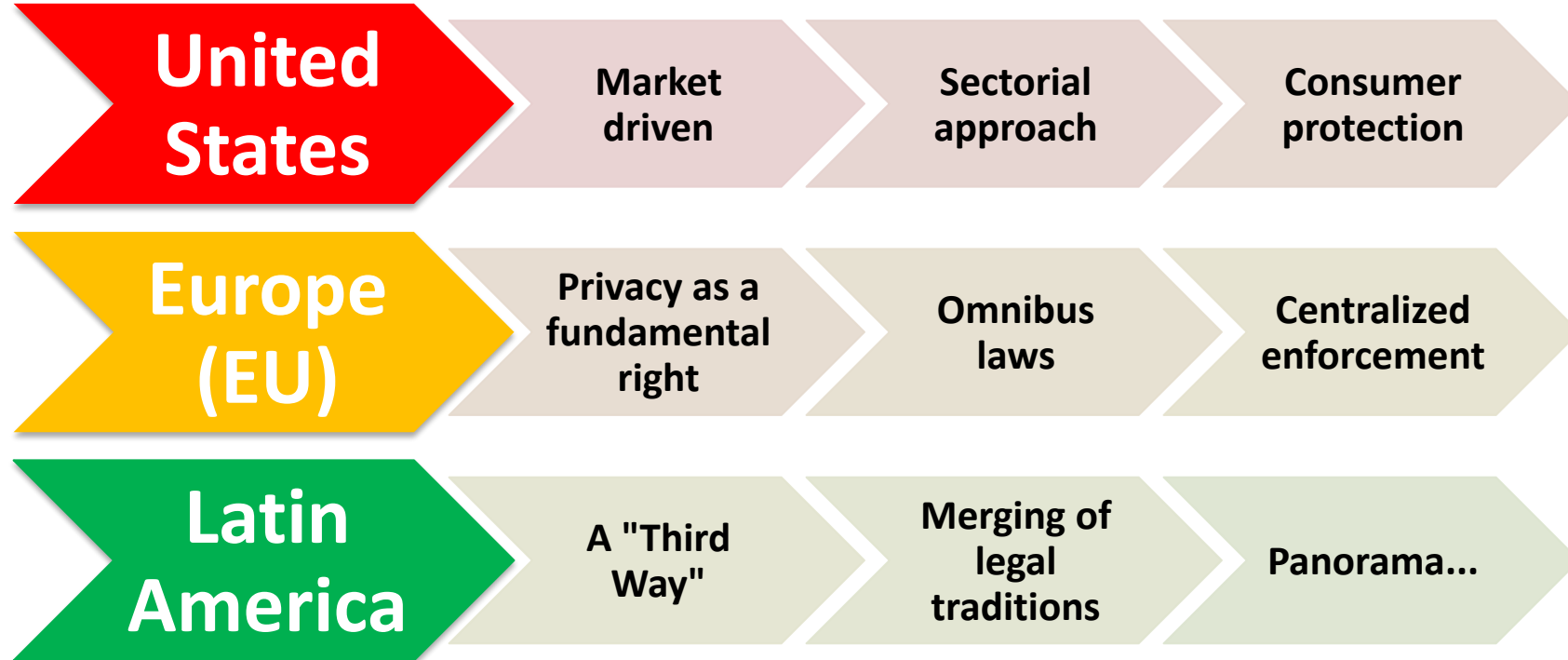
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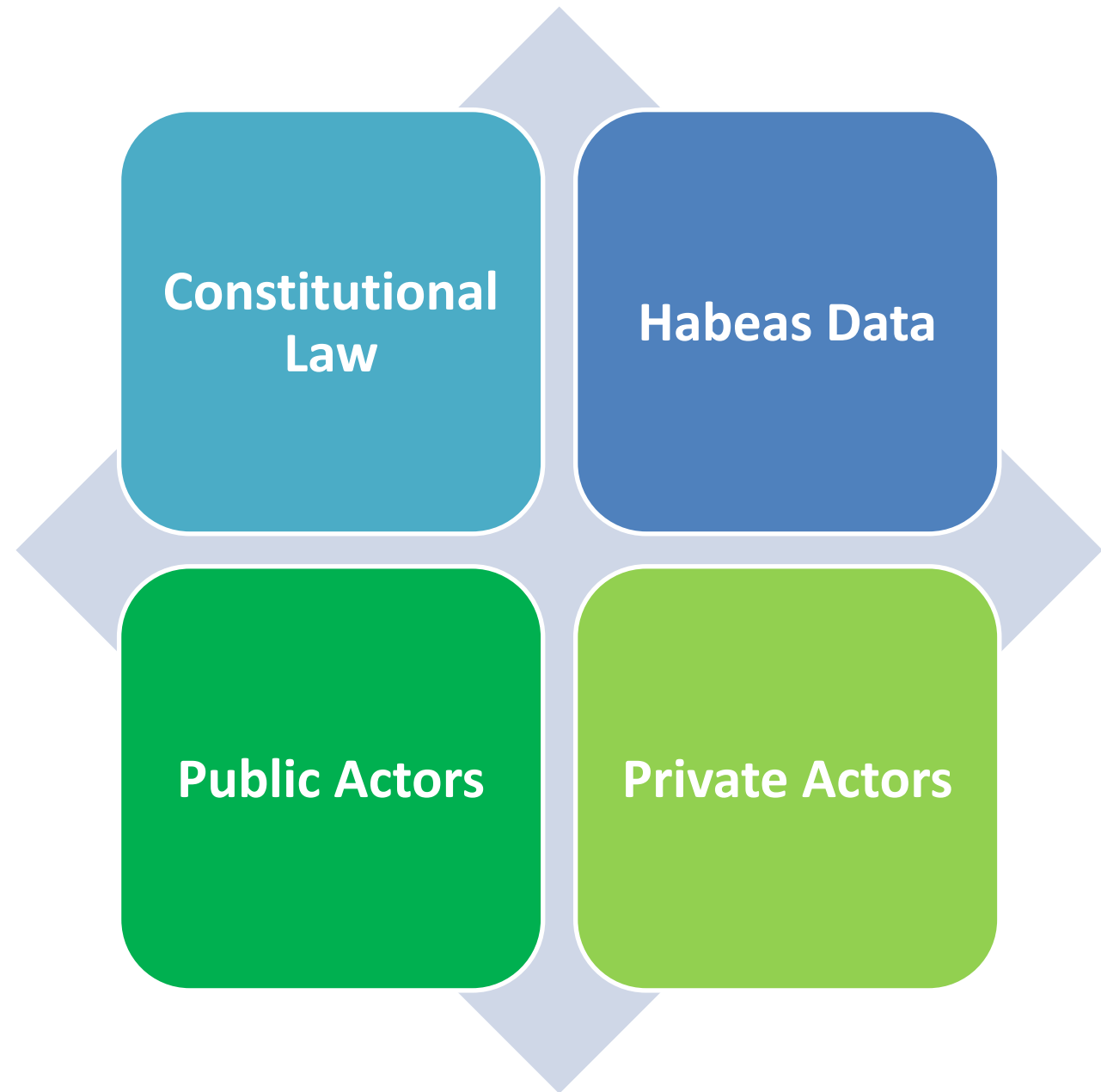
- **SESSION GOAL** - *Explore the complexity of the latest regulatory developments and data privacy trends in Latin America, a region experiencing rapid digital transformation.*
- **AGENDA**
 - Welcome/Introductions
 - Context & Overview
 - Specific Laws/Details
 - *Break*
 - Issues, Hot Topics & Discussion
- **METHODOLOGY:**
 - Interactive presentations & dialogue/Q&A

Context & Overview

Context



Context



Overview



Evolution of LatAm Data Privacy Law

First Wave

- Chile (1999), Argentina (2000), Paraguay (2000)

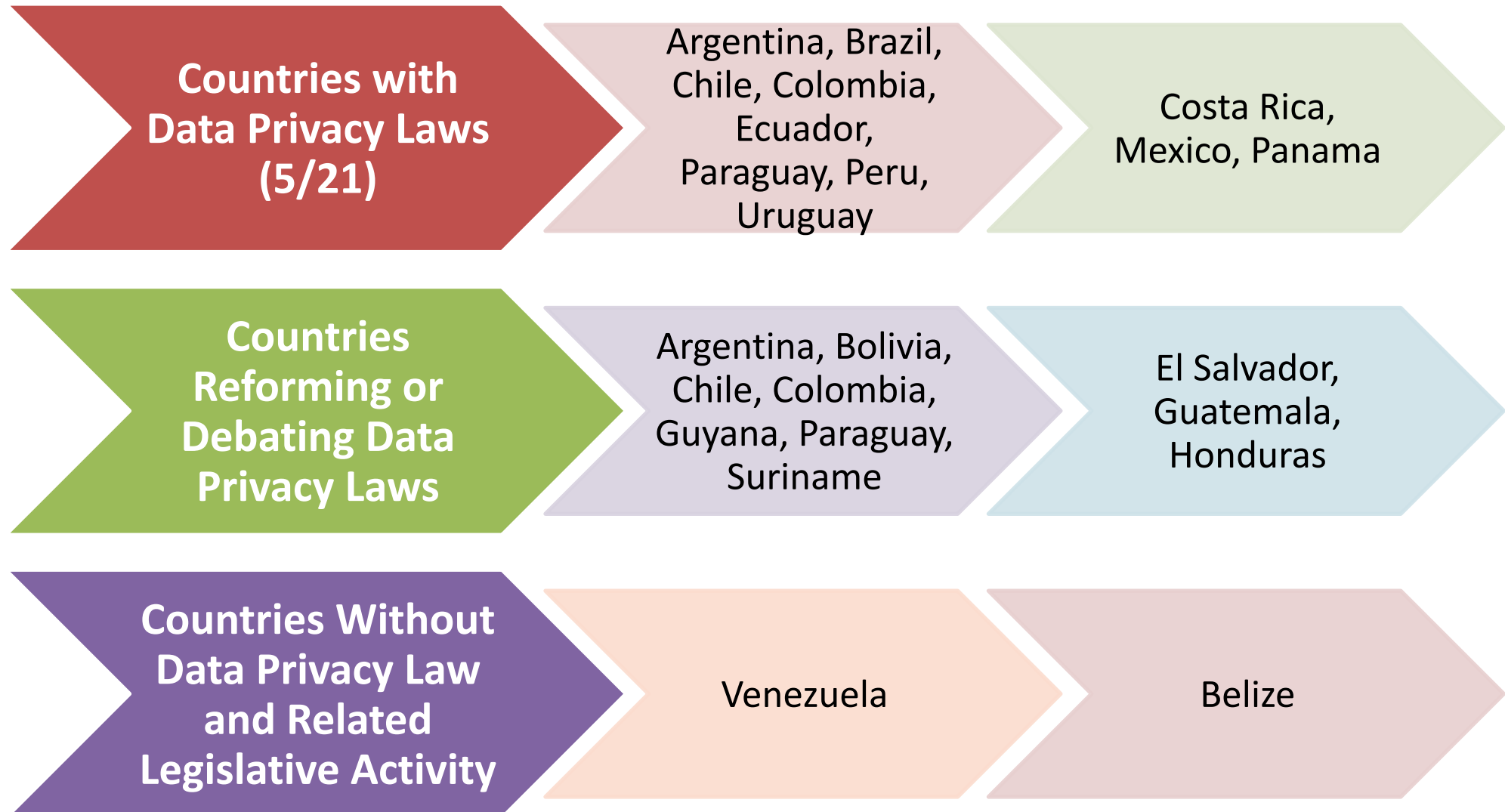
Second Wave

- Uruguay (2008), Mexico (2010), Peru (2011), Colombia (2012)
- Costa Rica (2011), Nicaragua (2012)

THIRD WAVE

- Mexico (2017), Brazil (2018), Ecuador (2021)
- Panama (2019)

Panorama of LatAm Data Privacy Law



All jurisdictions in the region recognize some kind of concept of privacy

Right of access to personal data of public sphere and Habeas Data, are almost always recognized

Most of Latin American countries have data protection agencies

New regulation

Panamanian
Data
Protection
Law Enters in
Force



Ecuadorian
Plenary Session
Approves Data
Protection Law



Brazil's Data
Protection Law
Enters in Force and
Becomes
Retroactively
Effective



MEXICO'S REGULATION

DATA PROCESSING PRINCIPLES

Legitimacy, Consent, Information,
Quality, Purpose, Loyalty,
Proportionality
Accountability.

PRIVATE PARTIES

- Federal Law on Protection of Personal Data Held by Private Parties
- Regulations to the Federal Law on Protection of Personal Data Held by Private Parties

PUBLIC PARTIES

- General Law on Protection of Personal Data Held by Public Parties

MEXICO

INDIVIDUAL RIGHTS

Right to Access, right to rectify, right of
cancellation and right of opposition.

ENFORCEMENT

National Institute of Transparency,
Access to Information, and Personal
Data Protection ("INAI")



Cybersecurity in Latin America



Nicaragua's Special Cybercrime Law

Mexico's Cybersecurity Law Initiative

Panama's Cybercrime Law

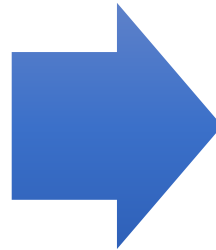
Brazil's General Data Protection Law

Specific Laws/Details

Mexico

Initiative to reform federal law

A Mexican senator presented a bill to amend the Data Law



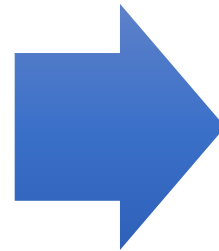
Proposes obligation of providing data breach notifications to the data owners and to the INAI (max. 72 hours)

Currently, the LFPDPPP only imposes the obligation to notify when economic or moral rights are significantly affected

Mexico

Initiative to reform federal law

Obligation of the controllers to appoint a representative or implement a mechanism to comply with their obligations within Mexican territory



What constitutes the data subjects' economic rights for purposes of a breach

Mexican senate approves bill for the National Registry of Cellphone Users



Mexican Senate approved the bill to reform the Federal Law of Telecommunications and Broadcasting, providing for a national register of cellphone users



This register will be mandatory and will contain the following data:

- Cellphone number and time of the SIM card's activation



The INAI filed an unconstitutionality action before the SCJN against the reforming and adding of the Law, specially due to the creation of the National Registry of Cellphone Users



The INAI filed an unconstitutionality action before the Supreme Court of National Justice against National Registry of Cellphone Users



- Full name of the line holder
- Nationality
- Official identification number with photograph and unique population number
- Biometric data of line holder

The Deputies Chamber budget does not contemplate resources to implement such registry.



TELECOMMUNICATIONS
INSTITUTE
APPROVES FILING
UNCONSTITUTIONALITY
ACTION

Conflicts articles 6 and 7 of the Constitution and access to telecommunications services, which are fundamental rights.

National registry of cellphone users

It also grants undue power to the Federal Telecommunications Institute.



The SCJN has yet to determine whether the unconstitutionality action proceeds or not.

PERSONAL DATA UNDER THE T-MEC



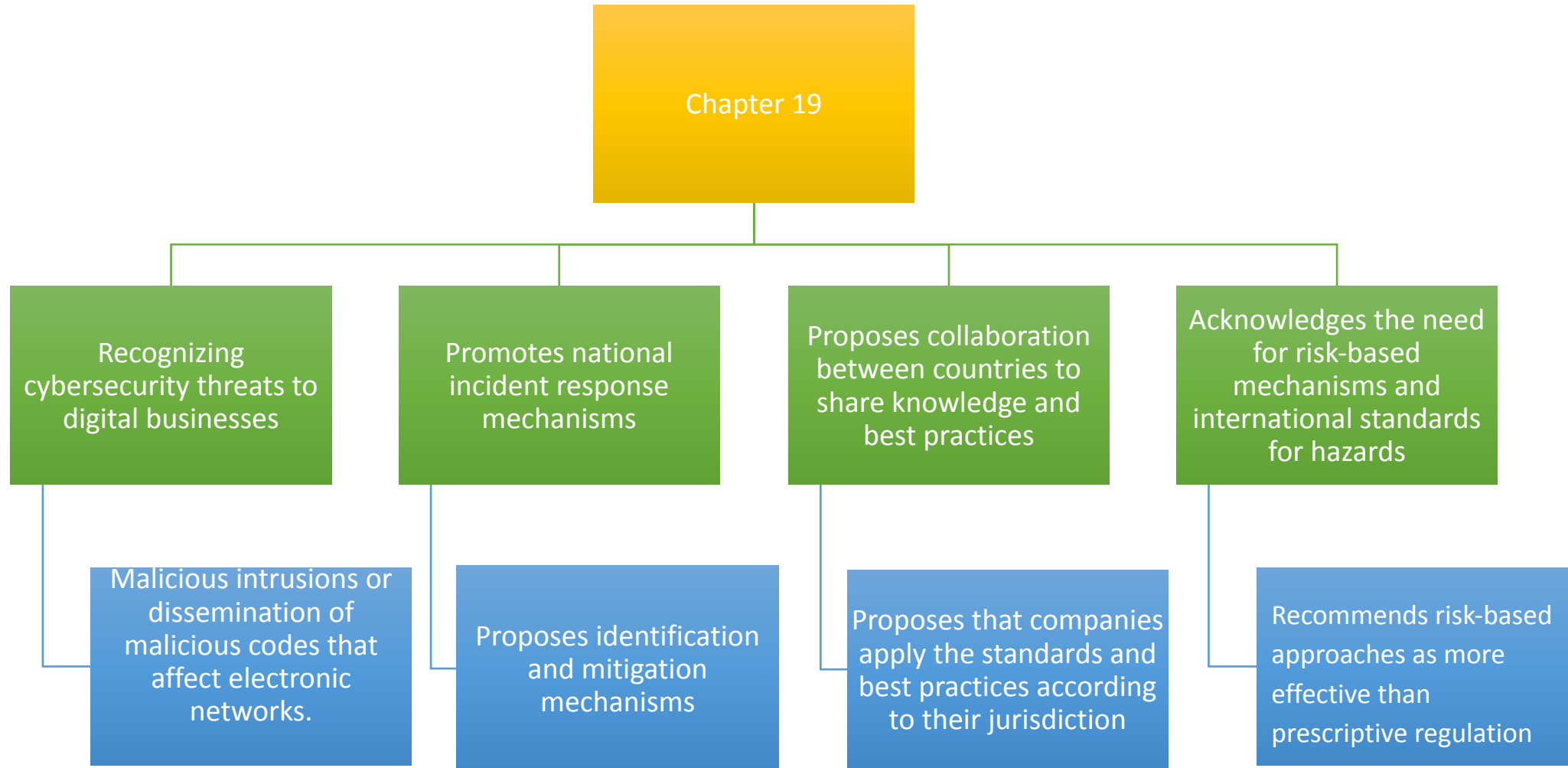
Main characteristics



- It does not maintain a specific model.
It is more specific than the TPP / CPTPP.
Encourages OECD principles and APEC principles.
Encourages compatibility and interoperability.
Recognizes the CBPR system as a valid mechanism for international transfers.
Establishes the application of legal frameworks that must be necessary and proportionate.
Encourages cooperation and compatibility among the three countries.
Adds a clear definition of personal data.
Provides a legal framework that provides for the protection of personal information.
Encourages cooperation between government agencies in personal information protection investigations.

Prohibitions

- Prohibition of restrictions on cross-border data transfer flow, except:
- Legitimate public policy objective, + (i) non-arbitrary measure (ii) non-discriminatory measure (iii) non-excessive measure.



Recommendations

- Elaboration of impact analysis, for example:
 - Data transfers made by the company
 - Security in digital platforms
- Recognition of data protection principles
- Reinforcement of compliance programs
- Implementation of mechanisms to identify and mitigate malicious intrusions
- Adoption of digital security measures and preparation for cybersecurity incidents



Brazil's LGPD



Brazil's LGPD



ANPD – Brazil's Authority



Topic	Start of regulation		
	1º/2021	1º/2022	2º/2022
ANPD's Internal Rules	•		
ANPD's Strategic Planning	•		
SME simplified rules	•		
Sanctions	•		
Incidents notification	•		
DPIA	•		
DSRs		•	
DPO		•	
International Transfer		•	
Lawful basis			•

COLOMBIA'S REGULATION



PRINCIPLES OF DATA PROCESSING

Legality, Purpose, Liberty, Accuracy or Quality, Transparency, Access, Limited Circulation, Security and Confidentiality.

REGULATION

Statutory Law 1581



COLOMBIA

INDIVIDUAL RIGHTS

Right to know, update, and rectify and right to request proof of consent, right to know the use of the data, right to complain, right to revoke consent and to request deletion and right to access.



ENFORCEMENT

Colombian Superintendence of Industry and Commerce (SIC)



SIC Requests Google to Comply with the National Data Protection Standard.

- Their Information Processing Policy did not comply with the Colombian regulations

SIC Fines Movistar for Consulting User's Credit History for Marketing Purposes

- A fine of US\$69,209.80 for consulting a user's credit history for commercial and sales purposes, without user's consent

SIC Orders Tiktok Application to Comply with Colombian Standards of Data Protection.

- Ordered TikTok to implement additional data protection measures, since they failed with 47.37% of the Colombian standards

COVID-19 related:



ARGENTINA

Argentine National Public Information Service Agency (AAIP) Issues Guidelines on Personal Data and Temperature Register during COVID-19 Pandemic Period.

- Body temperature data must be relevant, in accordance to its purpose and must be erased when it is no longer necessary .
- All terms in which the temperature data processing will take place must be available.
- Inaccurate or incomplete, data must be deleted and replaced.
- Body temperature data cannot be used for different or incompatible processing purposes.



URUGUAY

Uruguayan Data Protection Agency Issues Recommendations on the Use of Vaccination Center Images.

- An image is classified as personal data.
- An individual's vaccination information is sensitive data.
- Prior to an individuals' photo collection and processing, consent is required.
- Prior to the images dissemination, a balancing exercise between right to data protection and freedom of the press must be carried out.

COVID-19 related:



MEXICO

INAI Issues Recommendations on Personal Data Protection during COVID-19 Vaccination Process.

Verify that the electronic site enabled for registration is the official site, void providing unnecessary personal, Financial, or health information to strangers or through social strangers or through social networks or phone calls. Request the privacy notice.
Public officers do not have the authorization to take any pictures.



INAI Issued Statement About Protecting the Privacy of Vulnerable Individuals during the COVID-19 Pandemic Period.

The INAI stated there will be challenges in terms of personal data protection, as ensuring the privacy of individuals whose conditions may be associated with complications in the event of contracting COVID-19 such as persons with HIV, diabetes, hypertension or cancer.

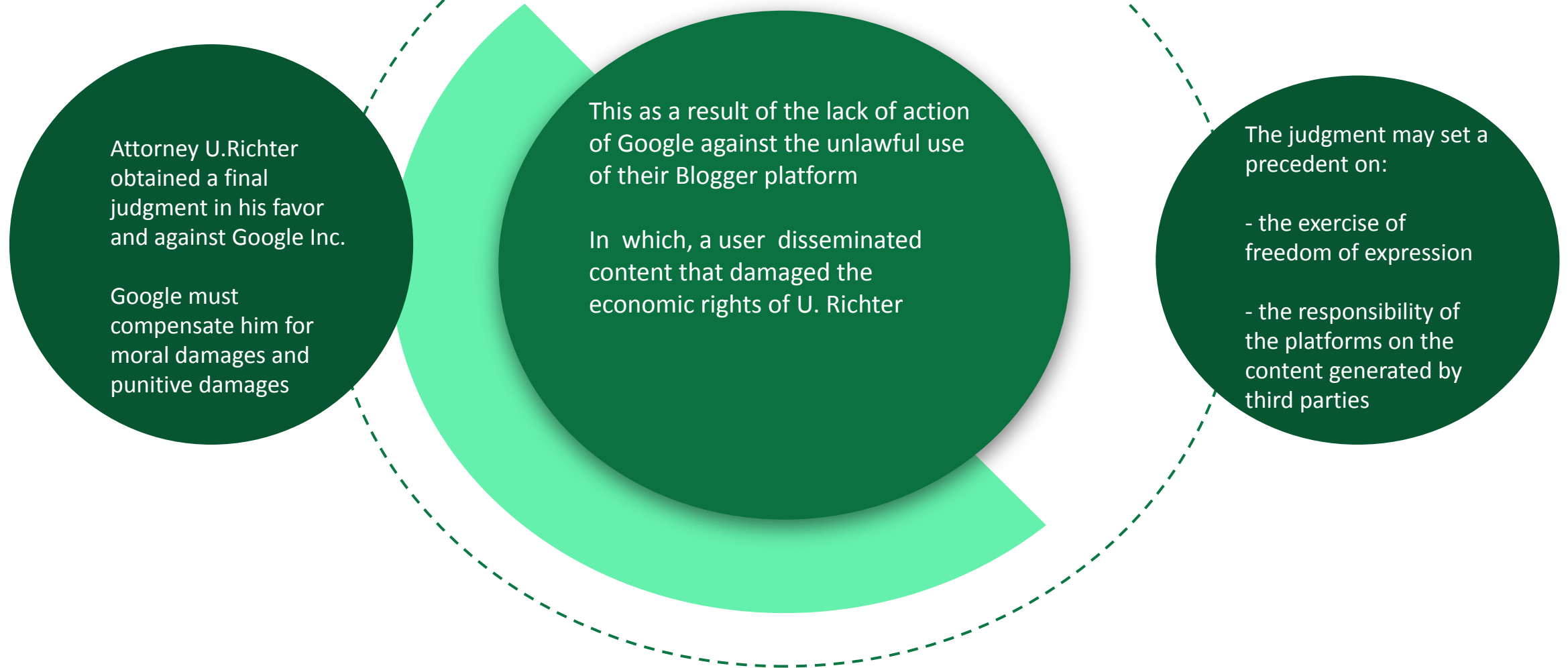
Issues, Hot Topics and Discussions

Preliminary issues list:

- Civil actions
- Right to be forgotten
- Reas. security
- Convention 108

Civil actions

ULRICH CASE



Right to be forgotten

Unpacking the Right to Be Forgotten

The RTBF in
Europe

*Derecho a la
cancelación* in
Latin America

“Oil &
Water”

*Google v
Spain*

GDPR
(Art.17)

*Habeas
data*

ARCO
Rights

Mexico,
Argentina,
Colombia,
Peru



RIGHT TO BE FORGOTTEN INAI VS. GOOGLE MÉXICO

INAI ordered Google Mexico to:

- De-index certain URLs from the Google Mexico search engine
- Delete personal data relating to an individual from its databases



An individual claimed that his name on a Google Mexico search engine disclosed:

- his name,
- the name of his (deceased) father,
- the names of his brothers,
- and information pertaining to his business activities.



INAI decided Google Mexico was responsible for the processing

- Though, Google stated that they were legal entity distinct from Google Inc., which was the data controller.

RIGHT TO BE FORGOTTEN

INAI VS. GOOGLE MÉXICO

Google México was sanctioned for:

- not replying the individuals request

- they must de-index the listed URLs so that they could no longer be found through a search



INAI also ordered the company to respect:

- the user's right to be "forgotten"
- and right of deletion



Mexico recognizes the personal data protection and privacy is a fundamental right - ARCO rights.

Although it is not directly recognized, as in some parts of Europe, the right to be forgotten can be broken down from:

- guidelines on privacy and data protection,
- and it has been confirmed through judgments that it is respected.

Reasonable security

Reasonable security

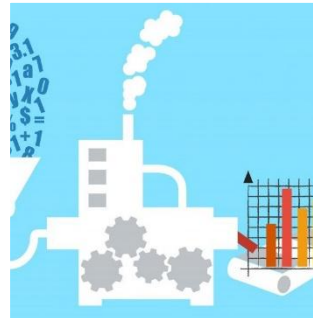


Confirmation of the legal framework for the personal data processing



Minimum data collection and retention periods

Informing data subjects of any extraordinary data processing



Creation of policies applicable to day to day situation



Protection of the identity of data subjects



Monitoring of teleworking

Reasonable security



Incident
response plan



Control of
communications
and messages

Use of security
measures



Updates and
trainings



Convention 108

CoE Convention 108 & 2018 Protocol

Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (1981)

- Argentina
- Mexico
- Uruguay

2018 Protocol Amending Convention 108

- Uruguay (signature)
- Argentina (signature)

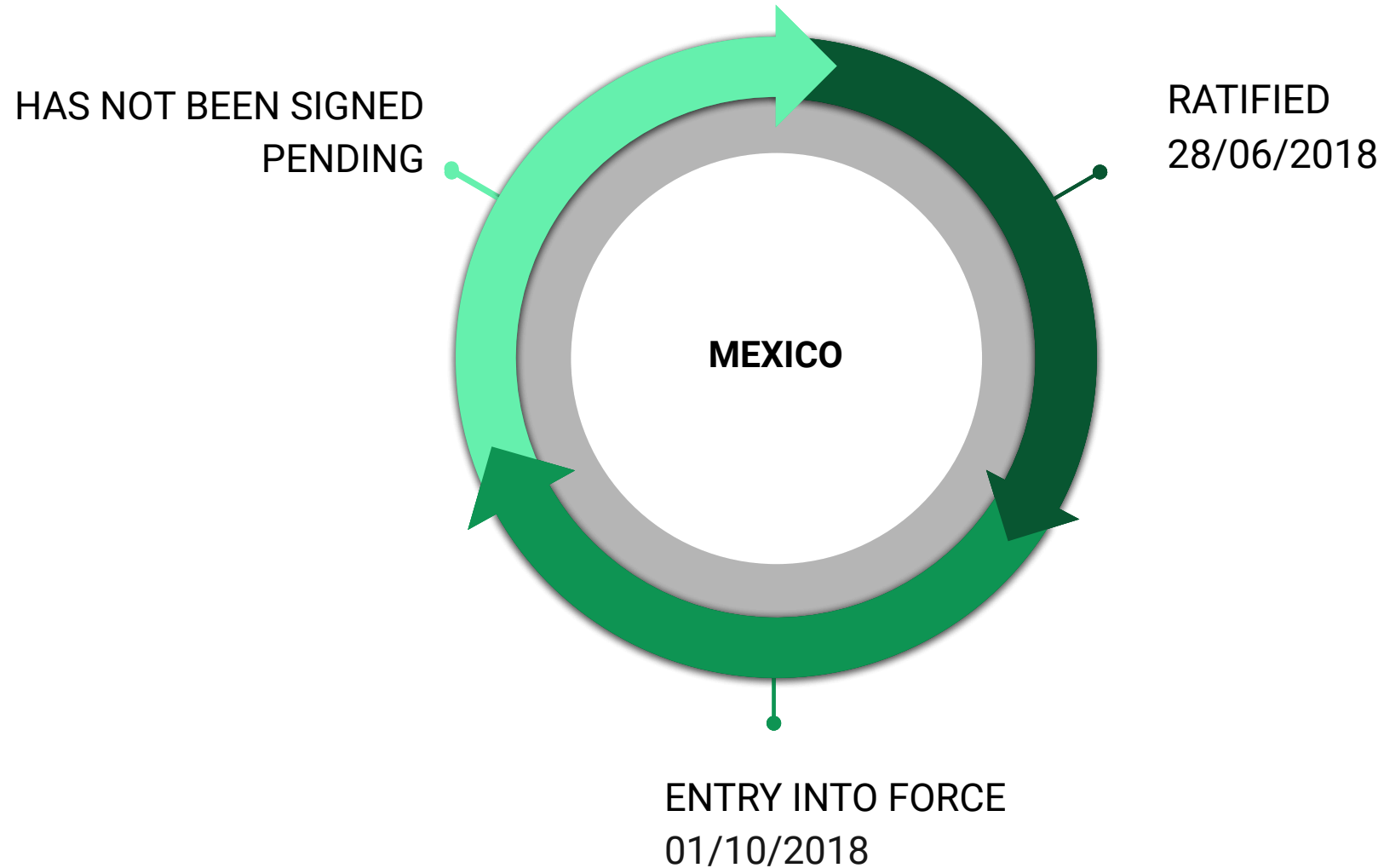
Convention 108(+)'s Relationship to the GDPR

- Technical considerations
- Connection to “Adequacy” determinations
- Is “Adequacy” overrated?

The Future of Data Privacy in Latin America

- Convention 108(+)
- Data privacy laws
- The Role of the GDPR & other models (e.g., CCPA)

CONVENTION NO. 108 MÉXICO



Questions + Contact



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