

DATA PROTECTION IN LATIN AMERICA

THE MEXICAN CASE

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10 años de
transparencia



ifai

Data protection in Mexico... from what **perspective** was it incorporated to the law?

What is the **task of IFAI** regarding data protection?

What have been the **challenges** in implementing the legal framework?

What's next for data protection in Mexico?



DATA PROTECTION IN MEXICO: THE BACKGROUND

Data protection in Mexico... from what perspective
was it incorporated to the law?

THE PATH TO DATA PROTECTION

Federal Law of
Transparency and
Access to Public
Government
Information

2002

Constitutional
reform

2007

Federal Law on
Personal Data
Protection held by
Private Parties

2010

THE FIRST STEP: THE FLTAPGI

- On July 11, 2002, the **Federal Law of Transparency and Access to Public Government Information** was enacted. One chapter focused on data protection (7 articles)
- The law granted individuals the right to **access** and **rectify** personal data held by the public sector
- Article 18, paragraph II, sets the **confidentiality** of personal data.



**Public
Information**



**Public
Information**



**Public
Information**



**Personal
data**



**Public
Information**

The law sought to protect **personal data** by limiting access to information in government files

CONSTITUTIONAL REFORM

- On July 20, 2007, the constitutional reform was enacted. The reform sets out the fundamental principles and operational bases to ensure the right of access to information for all levels of government
- Section II of Article 6 establishes the right of data protection, again, as a limitation on the right of access to information :

The information related to privacy and personal data will be protected under the terms and subject to the exceptions prescribed by the laws.

CONSTITUTIONAL REFORM

On September 20, 2007, a **reform to the 16th article** of the Constitution was approved:

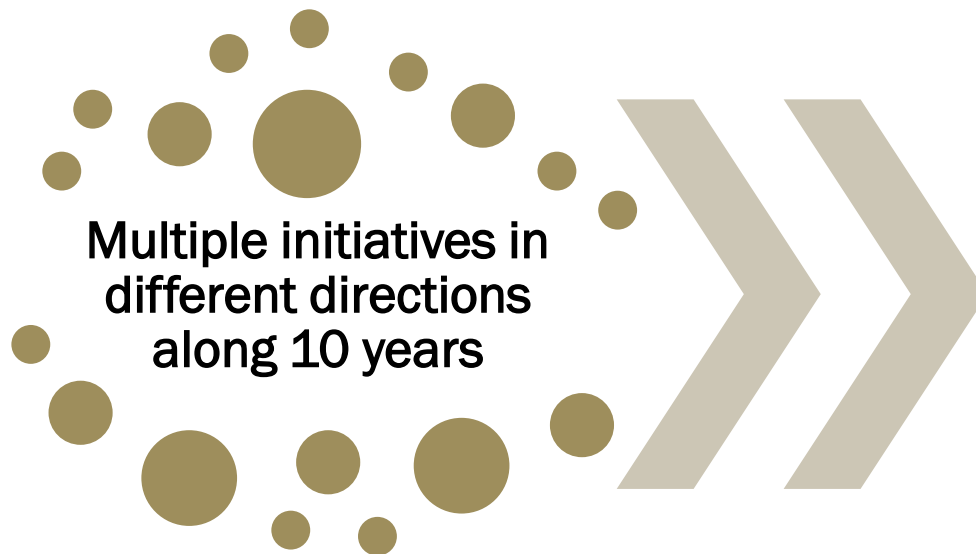
Every person has the right to data protection, and the right of access to personal data, and where appropriate, to rectify, cancel and to oppose the use of his data, in the terms established by law.

The law may establish cases of exception to the principles governing the processing of data, for reasons of national security, order, public health and safety or to protect the rights of third parties.

The constitutional reform finally recognized and gave content to the right to **data protection** as an **independent right**



THE FLPDPPP



Decentralized process



Law passed by a large majority

THE LEGAL FRAMEWORK

Public
sector

Federal Law of
Transparency
and Access to
Public
Government
Information

Local laws at
the state level

Private
sector

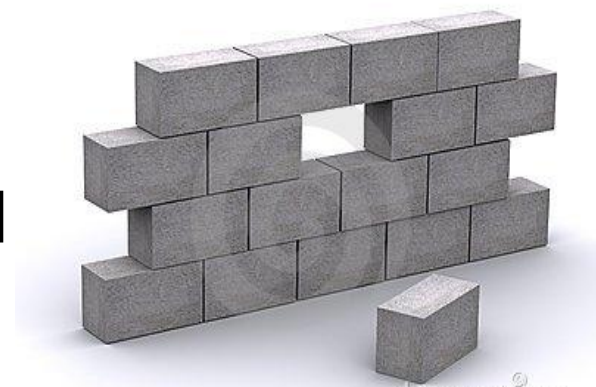
Federal Law on
Personal Data
Protection Held
by Private
Parties

PUBLIC SECTOR

- Provides for the right of **access** [art. 24] and **correction** [art. 25], both free
- IFAI reviews the decisions of public bodies if the citizen is not satisfied (**appeals**)
- It contains a set of **obligations** for the treatment of personal data [art. 20], on safety, quality and proportionality of personal data

PUBLIC SECTOR: FAILURES

- The law does not include the right of **cancellation** and **opposition**
- The law does not state the **principles of protection** of personal data, or key measures such as the **privacy notice**.
- The **guidelines** on the Protection of Personal Data tried to "fill the gap" in the law, but are insufficient



PUBLIC SECTOR

Data protection emerged as an "appendix" to the FLTAPGI, before the constitutional reform and before the issuance of the law ..



→ **Incomplete legal system** with differences in **the scope of protection** for data held by the public sector and limited powers for IFAI

PRIVATE SECTOR

- The FLPDPPP includes every one of the **principles of data protection** and the **“ARCO” rights**, recognized in the document entitled "International Standards on protection of personal data and privacy, Madrid Resolution" adopted in November 2009
- The law places **people** at the center of the protection system, recognizing and respecting their dignity and worth
- The law establishes procedures to **ensure** the rule of law

PRIVATE SECTOR: THE FLPDPPP

1. Scope
2. Principles and Rights
3. Special arrangements for sensitive data
4. ARCO rights
5. Data Transfers
6. Authorities: IFAI-guarantor-and regulatory
7. Procedures (Protection of Rights, verification, sanction)
8. Offences and penalties
9. Crimes relating to mistreatment

DIFFERENT PROTECTION

Public
sector

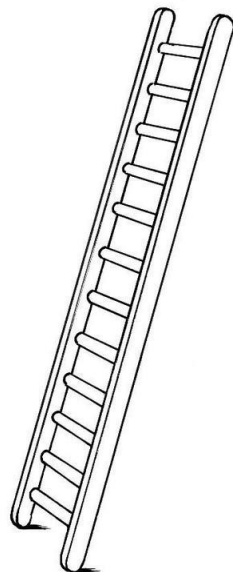
An incomplete system that "falls short" when compared with the private sector

Different laws for each government level

Private
sector

A comprehensive system of data protection in the European tradition, with one law for the whole country

Data protection in the public sector



Data protection in the private sector



The current legal framework is much more modern in the private sector

IFAI AS BODY IN CHARGE OF DATA PROTECTION

What is the **task** of IFAI regarding data protection?



IFAI- DUTIES

- The IFAI has the authority to establish **guidelines and policies** for the operation, maintenance, security and protection of personal data held by public bodies subject to the FLTAPGI
- Against the refusal to grant access or correction, it is possible to file a petition for review. The IFAI will solve the case in 50 days, generally in two ways:
 - Granting access to personal data or,
 - Verifying the absence of personal data

IFAI POWERS

The FLPDPPP gave IFAI enough powers as guarantor of data protection in the private sector:

- Informative powers
- Preventive powers
- Regulatory powers
- Powers of investigation
- Resolution powers

IFAI POWERS– PRIVATE SECTOR

Informative powers:

- Provide **technical support** to the private sector to fulfill its obligations
- To submit to **Congress** an annual report of its activities
- Develop, promote and disseminate, **studies and research** on protection of personal data held by the private sector

Regulatory powers:

- To **interpret** the law, from the administrative point of view
- To establish **guidelines and general policies** related to data protection
- Disseminate **standards and best practices**

Powers of **investigation**:

- To monitor compliance with the Act



Resolution powers:

- **Decide** on legal procedures established in the FLPDPPP:
 - **Protection of rights (ARCO)**
 - **Verification**, attending complaints or, initiated ex officio
 - **Sanction**, in the case of violations to the law
- Other procedures

For the private sector, a **comprehensive system of protection** has been created, with the FLPDPPP and Regulations, and the continuous emission of standards and criteria

However, **difficulties in implementing the Act** have shown that IFAI requires better powers to develop the legal procedures



CHALLENGES

What have been the **challenges** in implementing the legal framework?

CHALLENGES

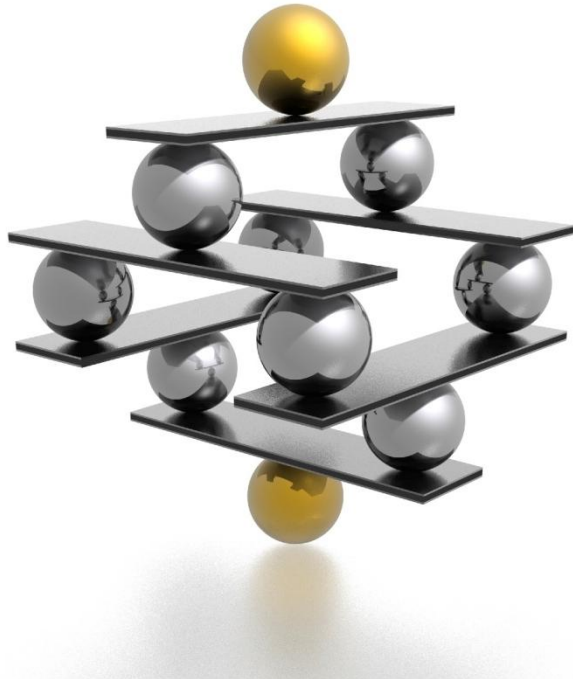
Two years after the enactment of the FLPDPPP, and 10 months after citizens can exercise ARCO rights, present challenges are:

- **Legal:** regarding the powers of IFAI
- **Institutional:** related to the IFAI as an organization
- **Cultural:** lack of awareness
- **Political:** potential changes in the legal framework by the new congress



LEGAL CHALLENGES

- Regarding **verification and sanction** in the private sector, IFAI has found that the legal framework failed to specify the procedure and powers of the Institute
- There are **procedural restraints** that result in ineffective IFAI resolutions: gaps in the legal framework have led to appeals by the private sector



How to **balance** data protection
and **due process** for the
private sector, in order to
make **IFAI** an **effective**
guarantor, in the context of an
intricate legal regime?

LEGAL CHALLENGES

It is necessary to **reform the LFTAIPG** in order to ensure that data protection in the public and private sectors, is at **the same level**



That is, to ensure that the right has the **same scope** for **both sectors**

INSTITUTIONAL CHALLENGES

- **Organizationally**, IFAI underwent a restructuring process to cope with new responsibilities. This process implied the need for new physical spaces
- **Structurally**, the duality of IFAI as guarantor of two rights (access to information and data protection), implies that the cross-sectional areas (including Commissioners), pay attention to one right without neglecting the other

INSTITUCIONAL CHALLENGES

- **Operationally**, it is difficult to implement the ARCO rights regime
 - Several million of companies, distributed in 32 states, with different "sizes" and "capabilities"
 - The need for an electronic system poses challenges for personal data that were not present in access to information
 - IFAI faces huge companies with large capacities, it has to prevent regulatory capture

How to **strengthen IFAI** to improve its capacity as the guarantor of **data protection**, without neglecting his work as an institution that guarantees the **right of access to information**?

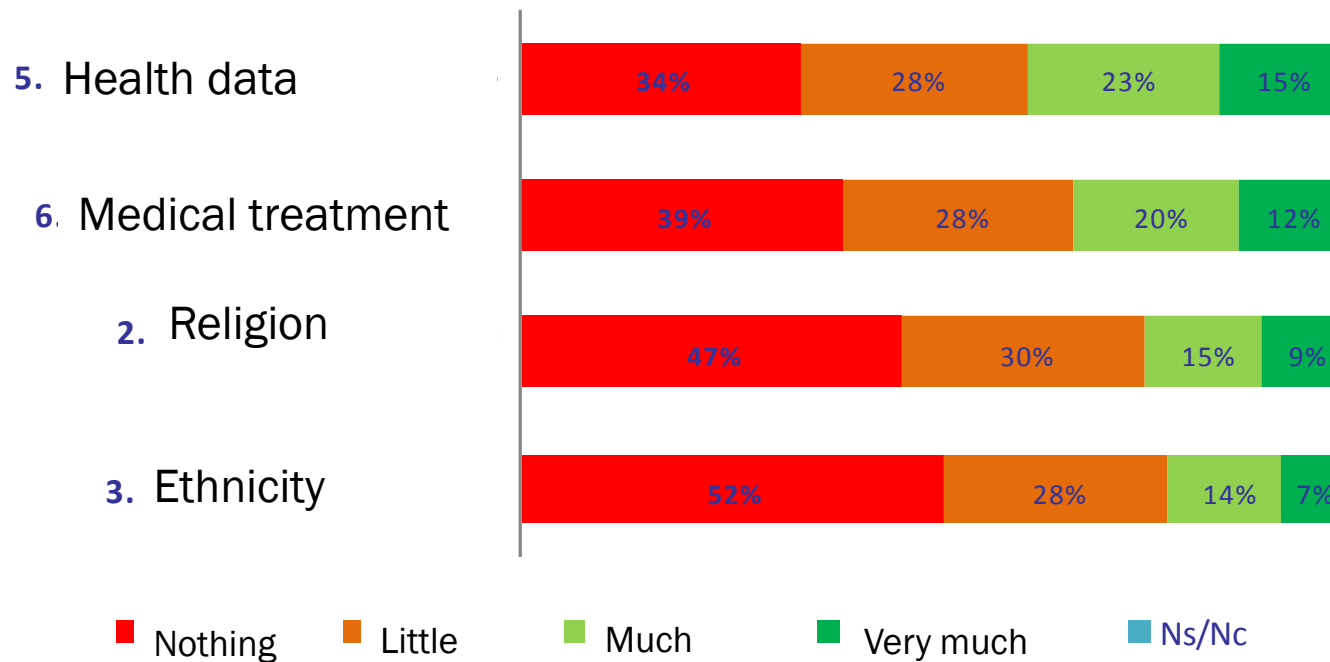


CULTURAL CHALLENGES

- Mexican society is still **unaware** of the existence and importance of the right
- Companies are in the process of becoming **aware of their obligations** regarding data protection
- Data protection is not the focus of public discussion and in Mexico, raising the challenge of generating **awareness** of the importance of the right

CULTURAL CHALLENGES

"I will give some examples of sensitive data and for each of them tell me how much will bother you to disclose it if they were yours. Would you bother very much, much, little or nothing?"



CULTURAL CHALLENGES

- There have been few appeals to the Institute:
 - **44** protection of rights requests,
 - **50** investigation files for the possible start of the verification procedure
 - **2** sanctions procedures

* Data for 2012, updated: October 17, 2012



CULTURAL CHALLENGES

- IFAI is developing **training programs** for the **private sector**, and has offices and telephone lines to serve data holders wishing to exercise their rights
- The IFAI has launched a **campaign on data protection**, the focal point of this first effort is the socialization of the **privacy notice**

Given that data protection is a right with many edges and technically complicated, How to raise **awareness** among citizens who have other concerns,



and how to make the **private sector responsible** for a subject outside his business sense?

POLITICAL CHALLENGES

- IFAI is at the center of public discussion. Several legal reform initiatives have been presented, to provide it with **constitutional autonomy**
- IFAI is facing a new possible **institutional redesign**

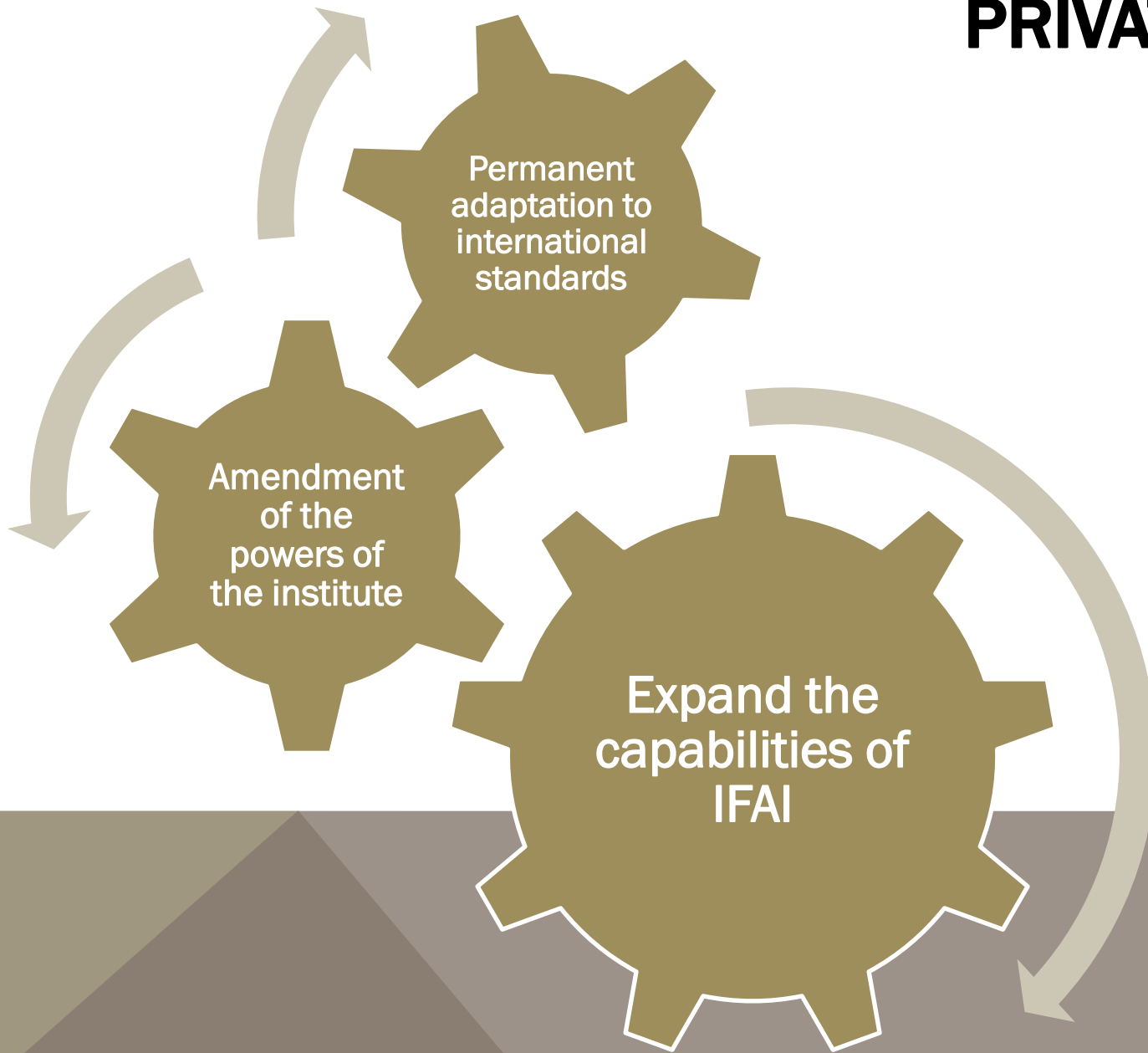


THE FUTURE OF DATA PROTECTION IN MEXICO

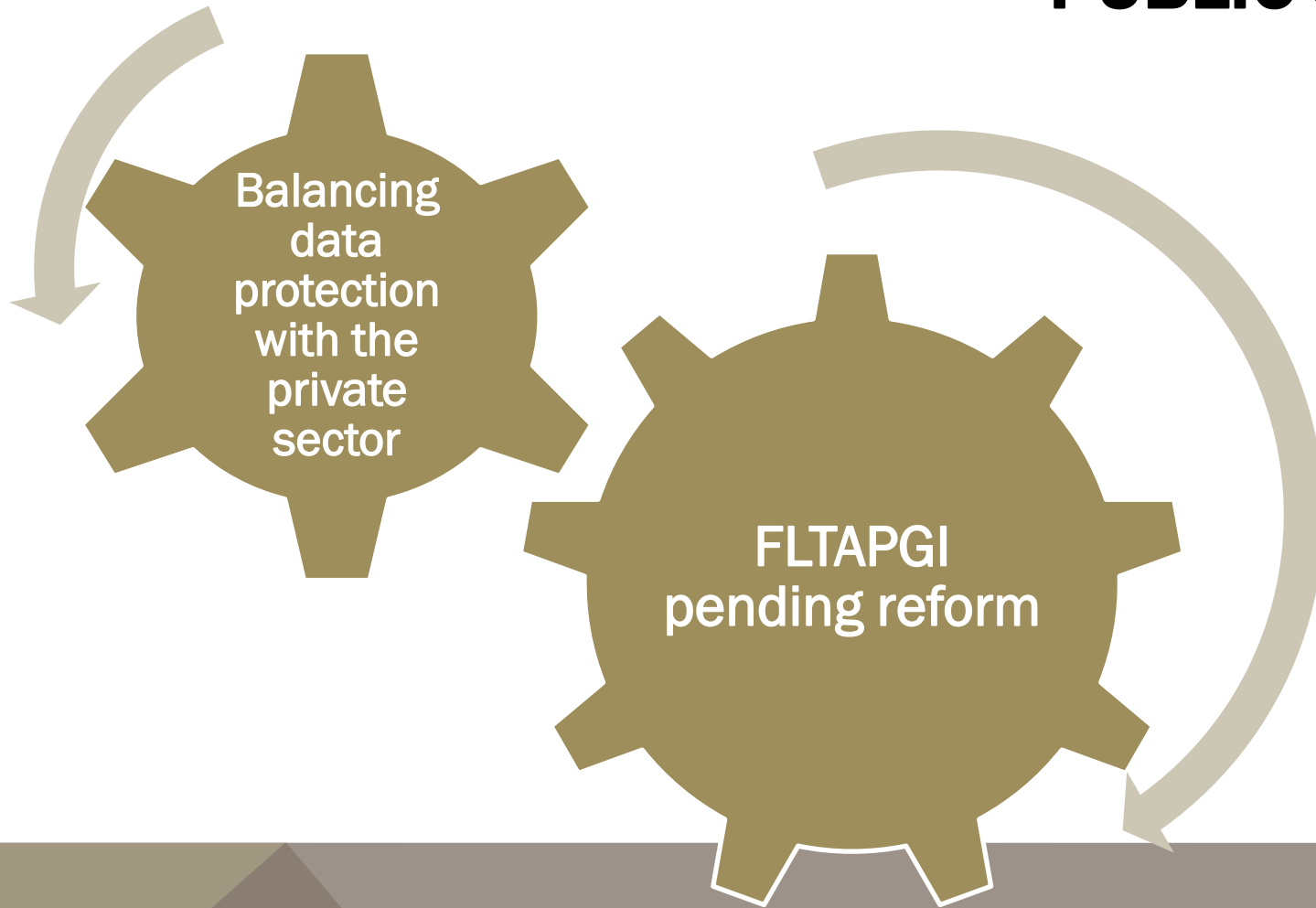
What's next for data protection in Mexico?



PRIVATE SECTOR



PUBLIC SECTOR



The most important task is to generate **awareness** among **citizens, and the private and public sectors.**

