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THE "SCHREMS II" CASE AND ITS POSSIBLE EFFECTS IN BRAZILIAN LAW

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Abstract: The information flow between different countries represents a striking feature of State sovereignty and of contemporary businesses' activities, which often implies the need to transfer citizen's personal data from one country to another. Aiming to safeguard the interests of the economic block and protecting the fundamental rights of European citizens, the Court of Justice of the European Union recently analyzed the complaint of an Austrian lawyer regarding the breach of the European General Data Protection Regulation (GDPR) guidelines, which resulted in the recognition of invalidity of standard contractual clauses that, until then, supported acts of international transfer of personal data from Europe to the United States, a case that became known as "Schrems II". Considering the similarities between GDPR and LGPD, the Brazilian General Data Protection Law (Law No. 13709/2018), there was a hypothetical possibility of a decision equivalent to that issued by the European Court, based on the Brazilian law and its possible consequences in the Brazilian context. Therefore this study aims to investigate the "Schrems II" case and point out that LGPD mirrored the framework brought by GDPR regarding the criteria for the lawful transfer of data internationally. Furthermore, due to the rules provided for in the LGPD for the international transfer of personal data, Brazil can both victimize and be a victim of cases of revocation of standard contractual clauses, hindering operations and commercial relations, although the regulation of this topic is still needed from the competent Authority.

Keywords: International data transfer; Schrems II; Privacy Shield; Standard contractual clauses; Brazilian General Data Protection Law.

O CASO "SCHREMS II" E SEUS POSSÍVEIS EFEITOS NO DIREITO BRASILEIRO

Resumo: O fluxo de informação entre diferentes países representa uma característica marcante da soberania do Estado e das atividades empresariais contemporâneas, o que implica muitas vezes a necessidade de transferência de dados pessoais dos cidadãos de um país para outro. Com o objetivo de salvaguardar os interesses do bloco económico e proteger os direitos fundamentais dos cidadãos europeus, o Tribunal de Justiça da União Europeia analisou recentemente a queixa de um advogado austríaco relativa à violação das orientações do Regulamento Geral Europeu de Proteção de Dados (RGPD), que resultou no reconhecimento da nulidade das cláusulas contratuais padrão que, até então, respaldavam atos de transferência internacional de dados pessoais da Europa para os Estados Unidos, caso que ficou conhecido como "Schrems II". Considerando as semelhanças entre o GDPR e a LGPD, a Lei Geral de

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Proteção de Dados Brasileira (Lei nº 13.709/2018), havia uma possibilidade hipotética de uma decisão equivalente à proferida pelo Tribunal Europeu, com base na lei brasileira e suas possíveis consequências em o contexto brasileiro. Portanto este estudo tem como objetivo investigar o caso "Schrems II" e apontar que a LGPD espelhou o arcabouço trazido pela GDPR no que diz respeito aos critérios para a transferência lícita de dados internacionalmente. Além disso, devido às regras previstas na LGPD para a transferência internacional de dados pessoais, o Brasil pode tanto vitimar quanto ser vítima de casos de revogação de cláusulas contratuais padrão, dificultando operações e relações comerciais, embora a regulamentação deste tema ainda seja necessária da autoridade competente.

Palavras-chave: Transferência Internacional de dados; Schrems II; Privacy Shield; Cláusulas-padrão contratuais; Lei Geral de Proteção de Dados.

EL CASO "SCHREMS II" Y SUS POSIVBLES EFECTOS EN EL DIRECHO BRASILEÑO

Resumen: El flujo de información entre diferentes países representa una característica llamativa de la soberanía de los Estados y de las actividades empresariales contemporáneas, que muchas veces implica la necesidad de transferir datos personales de los ciudadanos de un país a otro. Con el objetivo de salvaguardar los intereses del bloque económico y proteger los derechos fundamentales de los ciudadanos europeos, el Tribunal de Justicia de la Unión Europea analizó recientemente la denuncia de un abogado austriaco sobre la violación de las directrices del Reglamento General Europeo de Protección de Datos (GDPR) , lo que derivó en el reconocimiento de la nulidad de las cláusulas contractuales tipo que, hasta entonces, sustentaban actos de transferencia internacional de datos personales desde Europa a Estados Unidos, caso que pasó a conocerse como "Schrems II". Considerando las similitudes entre el GDPR y la LGPD, la Ley General de Protección de Datos de Brasil (Ley nº 13.709/2018), existía una posibilidad hipotética de una decisión equivalente a la dictada por el Tribunal Europeo, basada en la ley brasileña y sus posibles consecuencias en El contexto brasileño. Así, este estudio tiene como objetivo investigar el caso "Schrems II" y señalar que la LGPD refleja el marco traído por el GDPR con respecto a los criterios para la transferencia legal de datos a nivel internacional. Además, debido a las normas previstas en la LGPD para la transferencia internacional de datos personales, Brasil puede ser víctima o ser la causa de casos de revocación de cláusulas contractuales tipo, obstaculizando operaciones y relaciones comerciales, aunque la regulación de este tema es sigue siendo necesario por parte de la autoridad competente.

Palabras clave: Transferencia internacional de datos; Schrems II; Escudo de Privacidad; Cláusulas contractuales estándar; Ley General de Protección de Datos.

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1 Introdução

The globalized world has been subject to effects – either positive and negative – of technological advances, which, among several other factors, one specially brought by the development of Information and Communication Technologies (ICTs), a phenomenon that Manuel Castells called "Society in Network"[1].

[1] CASTELLS, Manuel. *A Sociedade em Rede.* 21. ed. São Paulo: Paz e Terra. 2020, p. 124.

This network finds in data its main input, which have become an asset of great value in the informational economy, since they allow its countless threads to intercommunicate quickly and assertively. It is no coincidence that the European Union, after a few generations of laws related to the protection of personal data - a right recognized there as fundamental since 2000[2] – sought to strengthen the regulatory level regarding the matter, mentioning the Data Protection Directive 95/46/ CE[3] and particularly to Regulation (EU) 2016/679, the General Data Protection Regulation (GDPR)[4].

With its in-depth list of rights addressed to the protection of individuals and the express provision for extraterritorial application of the GPDR, the regulation brought to European citizens the possibility of confronting large corporations in relation to the treatment of their personal data, causing the intervention of Courts and Administrative Authorities as to the legality of their conduct and even the validity of international agreements that, until then, supported the free international data transfer.

An emblematic and recent example of the ability to project the effects of the GPDR was the decision of the Court of Justice of the European Union (CJEU) which culminated in the invalidation of the agreement signed on February 2, 2016 between the United States of America and the European Commission, called "Privacy Shield"[5], a case that became known as "Schrems II", Maximillian Schrems' second triumph over a Big Tech on Facebook, before CJEU[6].

With the enactment of Law 13709, of August 14, 2018[7], known as the "General Law for the Protection of Personal Data" (in its Portuguese acronym "LGPD"), a national regulatory framework was established regarding the acts of processing of personal data carried out by the

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[2] As recognized in art. 8 of the Charter of Fundamental Rights of the European Union, "Everyone has the right to the protection of personal data concerning him or her". PARLAMENTO EUROPEU. Carta dos Direitos Fundamentais da União Europeia. *Jornal Oficial das Comunidades Europeias*, Brussels, 18 dez. 2000. Available at: https://www.europarl.europa.eu/charter/pdf/text_pt.pdf. Accessed 30 jan. 2021.

[3] PARLAMENTO EUROPEU. Directiva 95/46/CE do Parlamento Europeu e do Conselho, de 24 de Outubro de 1995, relativa à protecção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados. *Jornal Oficial das Comunidades Europeias*, Brussels, 24 out. 1995. Available at: https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:31995L0046&from=EN. Accessed: 14 sep. 2024.

[4] PARLAMENTO EUROPEU. General Data Protection Regulation (GDPR). *Intersoft Consulting, [S. l.]*, 2016. Available at: https://gdpr-info.eu/. Accessed: 14 sep. 2024.

[5] UNITED STATES OF AMERICA. Privacy Shield. *IAPP*, New Hampshire, 2016. Available at: https://iapp.org/media/pdf/resource_center/eu_us_privacy_shield_full_text.pdf.pdf. Accessed: 14 sep. 2024.

[6] The first of the triumphs concerns the invalidation of the agreement signed between the U.S. and the EU, called "Safe Harbor", which until 2015 regulated the arrangements regarding the flow of data between the signatories. The case became known as "Schrems I".

[7] BRASIL. *Lei nº 13.709, de 14 de agosto de 2018, Lei Geral de Proteção de Dados – LGPD*. Brasília, DF: Presidência da República, 2018. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709.htm. Accessed: 14 sep. 2024.

private sector, public administration and third sector. GDPR model alike, a standard in which Brazilian law was (albeit with differences) clearly inspired and considering the guidelines of the Organization for Economic Co-operation and Development (OECD), the LGPD brings a set of procedural rules for the legality of acts of international data transfer.

In the case of "Schrems II", the CJEU invalidated the "Privacy Shield", pointing out flaws in the standard contractual clauses that until then supported international data transfers. Based on the case in question and the premises above, it is worth asking: could the Brazilian authorities take a decision like the one issued by the CJEU and, thus, invalidate an agreement that regulates the international transit of data? If possible, what reflexes in the Brazilian context could be glimpsed?

Through hypothetical-deductive research method, supported by the bibliographic survey of the specialized doctrine and the analysis of the normative texts and the decision drawn up by the CJEU in "Schrems II" case, the present work concludes that the LGPD would support, in a similar way to the GDPR, invalidation of agreements dealing with the international transfer of data, which could have both positive and undesired economic consequences, depending on some variables exposed in the final items of the text.

2 Who is Max Schrems? The "Schrems II" case and the decision of the Court of Justice of the European Union

Maximillian Schrems is an Austrian data protection activist, founder of the NGO "Europe versus Facebook", which became known worldwide for exercising rights linked to the protection of personal data guaranteed within the European Union (EU)[8] and without correspondence in the United States (US) legislation, to point out the practice of abuse and the occurrence of illegalities committed by Facebook in the treatment of data of European citizens, aiming at the correction of these and the observance of the fundamental rights of users of the social network[9].

One of the main arguments of Max Schrems before the Irish data protection authority regarding the violation of users' rights was the improper sharing of personal data with third parties, especially agencies linked to the US government, such as the National Security Agency (NSA), who would have access to personal data received from Facebook users, conducting

[8] MAX Schrems. *Wikipédia, [S. l.], [S. d.].* Available at: https://en.wikipedia.org/wiki/Max_Schrems. Accessed: 14 sep. 2024.
[9] TEWARI, Shreya. Schrems II – A brief history, an analysis and the way forward. *VerfBlog*, Berlin, 25 jul. 2020. Available at: https://verfassungsblog.de/schrems-ii-a-brief-history-an-analysis-and-the-way-forward. Accessed: 14 sep. 2024.

mass surveillance acts, without the knowledge of the users of the respective owners[10], as recorded in the following excerpt of the decision:

> Once the personal data has been transferred to the United States, it is capable of being accessed by the NSA and other federal agencies, such as the Federal Bureau of Investigation (FBI), in the course of the indiscriminate surveillance and interception carried out by them on a large scale[11].

Schrems' actions took effect, resulting on a decision of the CJEU that, in 2015, invalidated the agreement between the US and the EU called "Safe Harbor", until then adopted as a basis for the free circulation of personal data in international transfer from the European Union to the United States, on the grounds that the fundamental right to privacy and protection of personal data[12] and effective judicial protection were violated by the American company[13].

Thus, it was recognized that the flow of data between the signatories did not confer the appropriate degree of security, incompatible with the rules of European law, especially with guarantees and fundamental rights regulated by Directive 95/46/CE[14].

Once Safe Harbor was invalidated, a new framework to support international data transfers between the US and the EU was designed: the "Privacy Shield", which this time promised to provide an adequate level of data protection to European citizens whose data was subject to transfer to the US, in order to comply with the rules in force in Europe[15].

However, considering the occurrence of new arrangements between the EU and the US, Schrems again challenged the Irish authority, which resulted in a new lawsuit that ended on July 16, 2020, when the CJEU decided to also invalidate the Privacy Shield, based on two main arguments.

The primary argument, stems from the conclusion that the EU-US Privacy Shield arrangements are not within the level of data protection equivalent to that required by the GDPR[16] in relation to the personal data of European citizens remaining in the USA, especially

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[10] TZANOU, Maria. Schrems I and Schrems II: Assessing the Case for the Extraterritoriality of EU Fundamental Rights (October 13, 2020). *SSRN, [S. l.]*, 2020. Available at: https://ssrn.com/abstract=3710539. Accessed: 14 sep. 2024.

[11] EUROPEAN COURT. "CJEU, Case C-362/14, Maximillian Schrems v Data Protection Commissioner". *InfoCuria, [S. l.]*, 6 oct. 2015. Available at: https://bit.ly/3qlz7aB. Accessed: 14 sep. 2024.

[12] Provided for in arts. 7 and 8 of the Charter of Fundamental Rights of the European Union, respectively. PARLAMENTO EUROPEU, Carta dos Direitos Fundamentais da União Europeia, *cit.*

[13] TZANOU, Schrems I and Schrems II, *cit.*

[14] EUROPEAN UNION. Court of Justice. Press Release No 117/15. *InfoCuria, [S. l.]*, 2015. Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117en.pdf. Accessed: 14 sep. 2024.

[15] TEWARI, *Schrems II, cit.*

[16] Vardanyan and Stehlík states that the Court understood that the equivalent level of data protection must respect the guidelines of the GDPR as well as the Charter of Fundamental Rights of the European Union: "It ruled that the level of protection should be 'practically equivalent' to the level of protection in the EU. However, the GDPR should be understood in the light of the EU Charter (...) The CJEU ruled that the use of SCC is required in a third country which 'guarantees the ensuring an adequate level of protection essentially equivalent to that ensured within

considering the finding of a high degree of surveillance exercised by bodies linked to the US government, as well as the impossibility of effectively exercising the rights of European data subjects before agents who perform acts of processing personal data in the United States[17].

The second reasoning concerns the duty of the parties involved in international data transfer operations to demonstrate compliance with the obligations imposed by the legal system of the country of destination of the personal data, including in regard to national security and the access of authorities and public bodies[18]. In fact, even before any act of transfer, or in the event of supervening verification of the impossibility in fulfilling such obligations, those involved must communicate this fact to the other party,[19] as well as suspend the transfer or terminate the contractual instruments related to the activities that are valid. information flow[20].

Essentially, according to a decision of the Court of Justice of the European Union, as standard contractual clauses that legitimized the international transfer of personal data of European citizens to the United States were invalidated, breaking again with the continuous flow of data from European citizens to the USA. The decision certainly had a huge impact on Facebook, one of the biggest beneficiaries of the Privacy Shield, which admitted that the future of its operations on the European continent was uncertain, if the CJUE upheld the decision that invalidated the agreement[21].

Wilbur Ross, the U.S. Secretary of Commerce, and Mike Pompeo, the U.S. Secretary of State, both expressed profound disappointment with the ruling, noting potential negative repercussions for the $7.1 million transatlantic economic partnership. They emphasized the critical role of data flows in driving economic growth and facilitating the post-Covid-19 recovery, and committed to collaborating closely with the European Union.[22]

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the Union'". VARDANYAN, Lusine; STEHLÍK, Václav. Schrems II: will it really increase the level of privacy protection against mass surveillance?. *Bratislava Law Review*, Bratislava, v. 4, n. 2, p. 111-128, 2020. Available at: https://doi.org/10.46282/blr.2020.4.2.215. Accessed: 14 sep. 2024.

[17] TEÓFILO, Caroline; CABELLA, Daniela M. Monte Serrat. Schrems II e LGPD: reflexões acerca dos impactos da decisão da CJEU no cenário brasileiro. *Migalhas*, São Paulo, 13 ago. 2020. Available at: https://migalhas.uol.com.br/depeso/331982/schrems-ii-e-lgpd-reflexoes-acerca-dos-impactos-da-decisao-da-cjeu-no-cenario-brasileiro. Accessed: 14 sep. 2024.

[18] VARDANYAN, STEHLÍK, *Schrems II*, *cit.*, p. 119-120.

[19] BIONI, Bruno Ricardo; FAVARO, Iasmine; RIELLI, Mariana. Por que a transferência internacional de dados tem que ser segura?. *Observatório Privacidade*, *[S. l.]*, 2020. Available at: https://observatorioprivacidade.com.br/2020/10/05/por-que-a-transferencia-internacional-de-dados-tem-que-ser-segura/. Accessed: 14 sep. 2024.

[20] TEÓFILO, CABELLA, Schrems II e LGPD, *cit.*

[21] As portrayed by the news published by The Guardian. HERN, Alex. Facebook says it may quit Europe over ban on sharing data with US. *The Guardian*, Londres, 22 sep. 2020. Available at: https://www.theguardian.com/technology/2020/sep/22/facebook-says-it-may-quit-europe-over-ban-on-sharing-data-with-us. Accessed: 14 sep. 2024.

[22] MILDEBRATH, Hendrik. The CJEU judgment in the Schrems II case. *European Parliamentary Research Service*, Brussels, 2020. Available at:

Therefore, it appears that with the advent of the GDPR - and the heavy sanctions that can be applied therein - the European Union (EU) created even stricter barriers to the international flow of personal data, in an attempt to establish a parity regime in relation to the processing of personal data provided within the EU to European citizens and that conferred in other countries outside the economic bloc. This reciprocity regime - imposed by forceps - is due to the provisions of item 1, of art. 45, of the GDPR[23], which only authorizes the international transfer of personal data to be transacted with EU member countries, if there is a level of protection considered "adequate".

Not only the financial aspect of the decision is relevant, but also the uncertainties arising from the need for legal compliance of contractual clauses involving the processing of personal data originating from international data flows, especially because it is expected that the vast majority of companies may continue utilizing the standard SCCs. However, others contend that companies should only rely on SCCs for transfers to the U.S., if at all, under two conditions: (i) they are not subject to the relevant surveillance laws, or (ii) they implement additional safeguards.[24]

In an official document drafted by the U.S. Congressional Research Service analyzing this topic, they conclude that although Schrems II invalidated the Privacy Shield, it left open the possibility of data transfers to the United States through SCCs or other mechanisms outlined in Article 46 of the GDPR. However, Schrems II did not specify what form these "supplementary measures" should take. To address this, on November 11, 2020, the European Data Protection Board (EDPB) issued recommendations that provided examples of such measures. Despite these guidelines, the EDPB acknowledged that in certain scenarios, "no effective" supplemental measures can be identified, rendering some data transfers to the U.S. particularly challenging.[25]

Despite the complexity of the measures needed in order to comply with EDPB's decision, SCCs are widely regarded as the most common method for transferring data abroad in the absence of an adequacy decision. Regardless, this measure is not a simple solution to the

https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/652073/EPRS_ATA(2020)652073_EN.pdf. Accessed: 14 sep. 2024.

[23] "A transfer of personal data to a third country or an international organization may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organization in question ensures an adequate level of protection. Such a transfer shall not require any specific authorization." PARLAMENTO EUROPEU, General Data Protection Regulation, *cit.*

[24] MILDEBRATH, The CJEU judgment in the Schrems II case, *cit.*

[25] CONGRESSIONAL RESEARCH SERVICE. EU Data Transfer Requirements and U.S. Intelligence Laws: Understanding Schrems II and Its Impact on the EU-U.S. *Privacy Shield, [S. l.]*, 17 mar. 2021. Available at: https://crsreports.congress.gov/product/pdf/R/R46724. Accessed: 14 sep. 2024.

problem, as their rigid content poses challenges for companies operating across multiple countries, which will have to implement uniform security and guarantee measures in highly diverse contexts.[26]

Regarding to the contractual measures, Arthur Cox highlights the need for enhanced contractual transparency and disclosure obligations, claiming that this would require the data importer to assist the exporter in conducting the necessary assessment by providing, to the extent legally allowed, information on the laws governing government access to data in the recipient third country, as well as details on the number of data access requests received and how the importer responded. Additionally, Cox suggests that adequate contractual measures includes audit rights for the exporter, commitments to uphold data subject rights, obligations for the importer to notify the exporter if it is unable to fulfill its contractual commitments, and requirements to challenge government access to data through legal channels before disclosing it, as far as such actions are legally permissible under the national law of the third country.[27]

This indicates the possibility of both economic and legal disputes over the use of data, waged between the EU and other major world powers, especially the United States of America and China, countries that, until then, did not have general laws (only sparse laws) of Personal Data Protection, nor a National Data Protection Authority (DPA's) to inspect the acts of data treatment practiced in the country.

Another factor that evidences this movement in economic blocks around the subject of the protection of personal data is that the Organization for Economic Co-operation and Development (OECD) presents, as one of the assumptions for the admission of new member countries, that the entering nation has a law regulating the protection of personal data and an authority to check compliance and thus make the standard effective[28]. Also, OECD's guidelines are responsible for densify the material content of principles, aiming to eliminate interpretive gaps in Brazil's data protection law[29].

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[26] SAKAMOTO, Maria Laura Grisi. International data transfer. An analysis of schrems cases I and II. *Seven Publications*, *[S. l.]*, 28 mar. 2023. Available at: https://sevenpublicacoes.com.br/editora/article/view/612. Accessed: 14 sep. 2024.

[27] COX, Arthur. The Aftermath of Schrems II – Examining the EDPB's Draft Recommendations for International Data Transfers. *Arthur Cox*, *[S. l.]*, 2020. Available at: https://www.arthurcox.com/wp-content/uploads/2020/11/The-Aftermath-of-Schrems-II-2.pdf. Accessed: 14 sep. 2024.

[28] OECD. The OECD Privacy Framework. *OECD*, Paris, *[S. d.]*. Available at: http://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf. Accessed: 14 sep. 2024.

[29] MASSENO, Manuel David. Das Consequências Jurídicas da Adesão do Brasil aos Princípios da OCDE para a Inteligência Artificial, Especialmente em Matéria de Proteção de Dados. *Revista Campo Jurídico*, Barreiras, v. 8 n. 1, 2020, p. 118. Available at: https://www.researchgate.net/publication/350081023_Das_Consequencias_Juridicas_da_Adesao_do_Brasil_aos_Principios_da_OCDE_Para_a_Inteligencia_Artificial_Especialmente_Em_Materia_De_Protecao_de_Dados. Accessed: 14 sep. 2024.

3 General aspects of international data transfer based on LGPD and its correspondence in the European model

In a globalized economy and in the context of a networked society, the need for common regulations and international applicability capable of bringing legal certainty and parity between different countries, including a regard to the free circulation of personal data, is becoming increasingly latent through international transfers[30].

This need was already recognized in 1980 through Convention 108 of the European Union[31], in which Joel Reidenberg suggested that the issue should be dealt within the scope of international treaties on data protection, especially for the regulation of electronic commerce rules[32].

However, in the absence of an international treaty capable of regulating the circulation of personal data in order to compose the different interests of nations and other interested parties, the GDPR, the most recent European Community standard on data protection, following the forecast of art. 25 of Directive 95/46/CE, new rules in favor of the European Union that, in some ways, serve as a filter to the legislative standards of countries outside the economic bloc in question, since it can even impose extraterritorial effects on them.

As points out Danilo Doneda, European regulations commonly end up having a marked international influence, mainly because the continent's growing international flow of personal data generates a demand for normative standards. Another reason is the existence of a clause prohibiting the transfer of data to countries outside the community that do not have an "adequate" level of protection[33]. In this sense, when analyzing the European normative model for the protection of personal data, Thiago Sombra observes a clear attempt to impose his own symbolic language on the other stakeholders regarding privacy[34].

These considerations aim to demonstrate why the Brazilian legislator has mirrored the already consolidated European model, a necessary premise for understanding the rules that

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[30] DONEDA, Danilo. *Da privacidade à proteção de dados pessoais:* fundamentos da Lei Geral de Proteção de Dados. 2. ed. São Paulo: Thomson Reuters, 2019, p. 249.

[31] As stated in the preamble to the said Convention: "Recognizing that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples". COUNCIL OF EUROPE. Full list - Treaty Office. *The Council of Europe, [S. l], [S. d.]*. Available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b37. Accessed: 14 sep. 2024.

[32] "A new international data privacy treaty will be essential for the long-term, robust growth of e-commerce". REDENBERG, Joel. E-commerce and transatlantic privacy. *Houston Law Review*, Houston, v. 38, 2001, p. 749. Available at: http://ir.lawnet.fordham.edu/faculty_scholarship/38. Accessed: 14 sep. 2024.

[33] DONEDA, *Da privacidade à proteção de dados pessoais, cit.*, p. 252.

[34] SOMBRA, Thiago Luís Santos. *Fundamentos da Regulação da Privacidade e Proteção de Dados Pessoais:* pluralismo jurídico e transparência em perspectiva. São Paulo: Thomson Reuters Brasil. 2019, p. 121.

regulate the international transfer of data in the LGPD. The Brazilian legislature's strategy clearly seeks to correspond to the norms foreseen in the GDPR, meaning the national "adherence" to the European norm, almost as if it had the force of an "international treaty" that, if "ratified", would be applied in the Domestic law[35]. The LGPD's subjection to the GDPR text can also be justified by the Brazilian economic interest in maintaining good commercial relations and the information flow with the European Union[36].

However, when entering the theme of the international transfer of personal data, especially in the context of information flows between Brazil and the European Union, in view of the particularities of the European system covered by art. 45 (1) of the GDPR[37], it is necessary to pay attention to the fact that, if it did not find a certain degree of correspondence in Brazilian legislation, the application of the European standard could bring about what Danilo Doneda rightly claims to represent "a kind of interference in the sovereignty of third countries , or as an indirect way of obtaining extraterritorial effectiveness for European law itself "[38].

In reality, it is important to note that the main purpose of this rule is not pure and simple overlapping of the GDPR regarding other rules, but to institute a compatibility judgment - or "adequacy" - between the level of protection provided by countries outside the bloc. European Union and, ultimately, the protection of the rights of European citizens. As general suitability criteria, in addition to the countries of origin and destination of the personal data to be transferred, the following are considered: (i) the purposes of the transfer; (ii) the nature of the data; (iii) the period for which the data will be processed; and (iv) the existence of safeguards regarding data download[39].

It should also be noted that there are, of course, differences between LGPD and GDPR, which occurs not only due to the weaving of the Brazilian legal system and its insertion in the civil law system, naturally different from the common law, traditionally adopted by some European countries such as England and Ireland, but also due to Brazilian particularities, especially in relation to the management of databases by the public authorities[40].

Having made these considerations, passing on to the analysis of the legal institute for the international transfer of personal data within the scope of the LGPD, it is worth clarifying

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[35] The words in quotation marks have a figurative connotation.
[36] SOMBRA, *Fundamentos da Regulação da Privacidade e Proteção de Dados Pessoais, cit.*, p. 134.
[37] "A transfer of personal data to a third country or an international organization may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organization in question ensures an adequate level of protection. Such a transfer shall not require any specific authorization.". PARLAMENTO EUROPEU, General Data Protection Regulation, *cit.*
[38] DONEDA, *Da privacidade à proteção de dados pessoais, cit.*, p. 253.
[39] SOMBRA, *Fundamentos da Regulação da Privacidade e Proteção de Dados Pessoais, cit.*, p. 130.
[40] *Ibidem*, p. 134.

that the transfer, as an act of data processing[41], does not entail the assignment of the personal data of the individual to whom the information is refer, but only to the extent of access to that individual's data in favor of third parties located in foreign territory[42]. Therefore, the international transfer of data does not have the power to remove the right to ownership of the data itself, especially considering that the right to the protection of personal data is a fundamental autonomous right[43], which integrates the plexus of personality rights of the natural person, very personal and non-transferable, par excellence[44].

Similar to the GDPR, the art. 33 of the LGPD also only authorizes the international transfer of data exceptionally if the situation falls under any of the following hypotheses: (i) countries or international organizations that provide a level of protection of personal data compatible with that provided by the LGPD; (ii) the controller offers guarantees and proof of compliance with the principles, rights of the holder and data protection regime provided for by law, through specific contractual clauses or standard contractual clauses ("standard contractual clauses", or "SCC"), norms global corporations (or, in the terminology of art. 47 of the GPDR, "binding corporate rules", or "BCR"), stamps, certificates or codes of conduct; (iii) different hypotheses related to international cooperation and public interest; (iv) with the consent of the holder specifically for the purpose of the international transfer; and (v) for the fulfillment of legal or regulatory obligations, for the execution of contracts or pre-contractual arrangements and for the regular exercise of rights in administrative, judicial or arbitration proceedings[45].

It is interesting to note that in addition to following the trend of other international initiatives aimed at standardizing and harmonizing the behavior of bodies and organizations of different nationalities, the LGPD regulates the issue of international transfer, opening space for

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[41] Under the terms of art. 5, item X, of the LGPD, are considered acts of treatment of personal data: "any operation performed with personal data, such as those referring to the collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, archiving, storage, deletion, evaluation or control of information, modification, communication, transfer, dissemination or extraction". BRASIL, *Lei nº 13.709, de 14 de agosto de 2018, Lei Geral de Proteção de Dados, cit.*

[42] COTS, Márcio; OLIVEIRA, Ricardo. *Lei Geral de Proteção de Dados Pessoais Comentada.* São Paulo: Editora Revista dos Tribunais. 2018, p. 202.

[43] On the subject, see the article entitled "A proteção de dados pessoais como direito e garantia fundamental na Constituição da República de 1988". ZANETTI DE OLIVEIRA, Dânton Hilário; FREITAS, Cinthia Obladen de Almendra. A proteção de dados pessoais como direito e garantia fundamental na Constituição da República de 1988. *In*: FERRAZ, Miriam Olivia Knopik; VETTORAZI, Karlo Messa (org.). *Direitos fundamentais e a era tecnológica* - Law Experience. 1. ed. Curitiba: FAE/Bom Jesus, 2020, p. 30-50.

[44] In this sense, personal rights are linked to someone's ability to securitize rights due to their existence as a human "entity", hence these rights are considered insusceptible to transmission - hence the expression "personal". NERY, Rosa Maria de Andrade; NERY JUNIOR, Nelson. *Instituições de Direito Civil:* volume 1: parte geral do código e direitos da personalidade. 2. ed. São Paulo: Thomson Reuters Brasil. 2019, p. 472.

[45] CARVALHO, Ângelo Gamba Prata de. Transferência internacional de dados na Lei Geral de Proteção de Dados-Força normativa e efetividade diante do cenário transnacional. *In:* TEPEDINO, Gustavo; FRAZÃO, Ana; OLIVA, Milena Donato (org.). *Lei Geral de Proteção de Dados Pessoais e suas repercussões no direito brasileiro*. 1. ed. São Paulo: Thomson Reuters Brasil, 2019, p. 624.

the construction of private normative sources. With this, it is recognized the validity of parastatal norms, destined to the specific factual conformation and to the behaviors expected from both sides, without the coercive effects of typical legislative sources being liable to be applied[46].

For this reason, especially considering the contours of the "Schrems II" case, discussed in the previous chapter, as well as the outline of this article, the specific analysis of the hypotheses for the international transfer of personal data contemplated in item "b", of art. 33, item II, of the LGPD, which refers to the hypothesis in which the data controller offers and proves guarantees of compliance with central aspects of the LGPD, through standard contractual clauses.

At the outset, it should be noted that the National Authority of Data Protection (in its Portuguese acronym "ANPD") is the body responsible for endorsing standard contractual clauses designed to regulate the international transfer of data, and, therefore, it must act positively from the analysis to the definition of its content[47]. For that, according to the prerogatives conferred by the second paragraph of art. 35, of the LGPD, the authority may even request supplementary information or even take steps to better assess the lawfulness of treatment operations, if necessary.

Naturally, the scope of the standard clauses must be guided by the structuring of mechanisms capable of establishing obligations to treatment agents, thus honoring the principles of responsibilities and accountability[48], a clear manifestation of the notion of accountability that emanates from both the GDPR and the LGPD; as well as allowing the protection of the rights of personal data holders.

This, however, does not mean removing the private autonomy of the treatment agents, but only conforming it to the need to establish safeguards in favor of the holder, the one who represents the most fragile link in the relationship that revolves around the processing of personal data, to be certified by the ANPD[49].

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[46] GLITZ, Frederico Eduardo Zenedin. BREXIT, direito contratual europeu e Mercosul: lições para a integração. *Revista Novos Estudos Jurídicos*, v. 24, n. 2, 2018, p. 552. Available at: https://www.researchgate.net/publication/327427962_BREXIT_DIREITO_CONTRATUAL_EUROPEU_E_MERCOSUL_LICOES_PARA_A_INTEGRACAO. Acessed: 31 dez. 2024.

[47] COTS, OLIVEIRA, *Lei Geral de Proteção de Dados Comentada, cit.,* p. 209.

[48] Pursuant to item X, art. 6 of the LGPD, the principles of accountability and accountability demand the "demonstration, by the agent, of the adoption of effective measures and capable of proving the observance and compliance with the rules of protection of personal data and, even, of the effectiveness of these measures". *Idem.*

[49] CARVALHO, Transferência internacional de dados na Lei Geral de Proteção de Dados, *cit.,* p. 629.

Thus, the LGPD, by leaving open some criteria that depend on a case-by-case analysis to validate the standard contractual clauses, relegating such responsibility to the ANPD[50], also in this respect, the model adopted by the LGPD is close to that proposed by the GDPR, to the extent that, within the European Union, the European Commission is the body responsible for validating the soundness of other normative systems under Community[51].

4 Possible reflexes of "Schrems II" case in the Brazilian context

As seen, the case "Schrems II" resulted in the fall of an international agreement between the EU and the United States called "Privacy Shield", invalidating the standard contractual clauses that, until then, legitimized the continuous flow of transfer of personal data between the signatory countries. Therefore, these clauses doesn't respect the assumptions of the GDPR and the level of protection of personal data ensured by European Community law.It follows that, in the wake of European legislation, the LGPD also establishes similar criteria in relation to the hypotheses of international transfer of personal data, which is why it is pertinent to draw lessons from the European precedent[52].

Corroborating the similarity between GDPR and LGPD, Teófilo and Cabella claim that Brazilian law "imported" the logic of validating international transfers of personal data based on "standard contractual clauses", and conclude that the case-by-case analysis from the controller as to the applicability of standard contractual clauses and their respective compliance (due to the principle of accountability, art. 6, X, LGPD) is cogent, forcing him to prove: (i) the observance and compliance with the rules of protection of personal data and the effectiveness of these measures and, (ii) when the recipient of the data is an operator, the verification of the rules applicable to the matter, according to its territory, and the level of observance of instructions issued by the controller (art. 39)[53].

Thus, in theory, it can be said that the same rationale for the CJUE decision could be applied by the ANPD in a case similar to the Privacy Shield, in which an international agreement setting out standard contractual clauses would be annulled due to the incompatibility between the regime data protection provided for in the LGPD and that provided by another country, giving rise to a Brazilian version of the "Schrems II" case.

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[50] COTS; OLIVEIRA, *Lei Geral de Proteção de Dado Comentadas, cit.,* p. 204.
[51] CARVALHO, Transferência internacional de dados na Lei Geral de Proteção de Dados, *cit.*, p. 625.
[52] VIOLA, Mario. Transferência de dados entre Europa e Brasil: Análise da Adequação da Legislação Brasileira. *Instituto de Tecnologia e Sociedade do Rio*, Rio de Janeiro, 2020. Available at: https://itsrio.org/wp-content/uploads/2019/12/Relatorio_UK_Azul_INTERACTIVE_Justificado.pdf. Accessed: 31 dez. 2024.
[53] TEÓFILO, CABELLA, Schrems II e LGPD, *cit.*

It is said "in theory", since, although the normative text of the LGPD supports the invalidation of an eventual international agreement to authorize the flow of personal data between Brazil and other nations, it cannot be overlooked that diplomatic and international economic policy play a decisive role in eliminating eventual application of LGPD risk and, thus, breaking with standard contractual conditions with a view to maintaining commercial sales, even if it implies deteriorating the level of data protection at the national level.

Indeed, the fragility and economic dependence of Brazil in relation to certain bundles of commercial relations with countries such as the United States and China, for example, could open up the phenomenon called by McPhail as "electronic colonialism"[54], preventing the LGPD from producing its effects to the maximum extent due to external pressures from major players in the international market or the lack of interest of certain countries in providing a compatible level of data protection, as required by the national law[55].

In any case, it is curious to note that the discussion regarding the analysis of standard contractual clauses by the ANPD may imply two distinct hypothetical scenarios, both with positive and negative consequences.

In the first, if the agreement and its clauses were found to be invalid, interrupting the flow of international personal data transfer, commercial relations between the domestic market and companies from other nations considered to be commercial partners could be compromised.

In a second, the recognition of the validity of the agreement and its clauses could also affect Brazilian commercial interests, by calling into question the level of data protection provided by LGPD when compared to the European Union's level, which, until now, has remained firm in defense of protection of personal data of citizens of the bloc's countries. In fact, as Danilo Doneda explains, in this kind of systems, it is usual for weaker protection in a locality to compromise the entire structure, harming countries that provide reinforced tutelage, drawing a parallel to the "fiscal paradise", which before deregulation a transnational level may cause real distortions in the world economic-financial scenario[56].

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[54] The term was used pioneeringly by Thomas McPhail in 1981, originally referring to the finding that the evolution of ICTs could give rise to a new facet of imperialism. In 2004, McPhail updated the primitive concept to recognize the possibility of exercise by an oligopoly of corporations, generally based in the USA, but which aim to dominate the technology market globally. MCPHAIL, Thomas. *Convergence:* Information Society Brings Major Cultural Policy Issues. 3rd International Conference on Cultural Policy Research. Montreal: University of Montreal, 2004.

[55] ZAPATA, Cristian Berrío. *Tecnologia da Informação, Discurso e Poder:* Análise de Domínio a partir do conceito de Exclusão Digital na perspectiva da Teoria Centro-Periferia. PhD Thesis in Information Science. Universidade Estadual Paulista "Júlio de Mesquita Filho" Faculdade de Filosofia e Ciências, Marília, 2015, p. 70-71.

[56] DONEDA, *Da privacidade à proteção de dados pessoais, cit.,* p. 249.

It should be noted that if the entity responsible for deciding on the adequacy between legal regimes for the protection of personal data legitimizes the transfer does not make its statement, it is still possible to achieve the international circulation of data through the conclusion of standard clauses, generally adopted among agents that are not part of the same economic bloc, provided that they guarantee safeguards for the operation[57].

For this reason, the ANPD assumes a particularly important strategic role for Brazil in the context of international foreign and economic policy relations, since decisions of this nature can mean the strengthening of diplomatic and commercial relations with certain countries, entities, and international private companies, consolidating a control mechanism in the opening or closing of the market. The policy for the protection of personal data therefore assumes a decisive aspect in the agenda of economic liberalism.

Some other side effects resulting from the ANPD acting in the evaluation of standard contractual clauses are those that associate the rights to privacy and protection of personal data with other legal assets equally worthy of protection, such as labor, consumer, taxpayer rights, or even the competitive environment, which is increasingly affected in an economic data driven context[58], especially considering the Big Techs phenomenon, including Facebook, which starred in the "Schrems II" case.

In this sense, Bioni, Favaro and Rielli claim that international data transfer is one of the most relevant topics for data protection laws, because it is what allows not only Big Techs, but also startups that, since its conception are global, to function when carrying out daily operations of international transfer rates to maintain their performance. Therefore, companies and other data processing agents can transfer data here without having to use other instruments, which, as a rule, have a high cost[59].

É, pois, uma questão complexa, envolvendo o direito fundamental à proteção de dados pessoais[60] dos cidadãos brasileiros, eventual impedimento da consecução da atividade econômica de empresas nacionais e estrangeiras e, por fim, questões até mesmo diplomáticas, a nível de política internacional. Cabe à ANPD, aferir os pressupostos para validação de cláusulas-padrão contratuais levando tais aspectos em consideração.

5 Conclusion

[57] SOMBRA, *Fundamentos da Regulação da Privacidade e Proteção de Dados Pessoais, cit.,* p. 130.
[58] CARVALHO, *Transferência internacional de dados na Lei Geral de Proteção de Dados, cit.,* p. 629.
[59] BIONI, FAVARO, RIELLI, *Por que a transferência internacional de dados tem que ser segura?,cit.*.
[60] As expressly recognized by the Brazilian Federal Supreme Court in the judgment of Direct Unconstitutionality Actions N. 6.389, 6.390, 6.383, 6.388 e 6.387. Rel. Min. Rosa Weber. J. 07/05/2020.

At the height of the information society, faced with a scenario of transnational interconnection in cyberspace, exponentialized by the growing flow of data, including personal data, the issue of international data transfer is vital for the development of nations and private companies.

The inexistence of an international treaty with the scope of regulating the flow of information made it possible for the European Union, with the economic power of the bloc of countries that compose it and a robust legislative level regarding data protection, to present the GDPR and its rules regarding the validity of international transfer acts as a model to be followed. With this, it sought to safeguard its own interests and, thus, project the effects of a community norm extraterritorially, even in the face of other nations that do not have specific laws on the subject or, even if they do, do not provide a level of data protection considered adequate and compatible with that allegedly ensured by the GDPR.

This was very evident with the decision of the Court of Justice of the European Union in the "Schrems II" case, in which the Privacy Shield agreement, which supported the transfer of personal data of European citizens to the United States, was invalidated, considering that the US legislation did not provide an adequate level of protection of personal data – that is, compatible with GDPR standards – and, consequently, as standard contractual clauses will not be valid.

Brazil, aiming to demonstrate normative maturity regarding the protection of personal data and compatibility for the maintenance of valid information flows with European countries, mirrored many of the rules provided for in the European regulation into LGPD's text.

It is evident that any futurology exercise would be mere speculation, especially regarding the criteria and level of rigor that will be adopted by the Brazilian authority, whether in relation to the suitability of other legal systems to the LGPD, or as to the validity of standard contractual clauses, which depends on a case-by-case analysis, and not in abstract.

However, if there is any certainty in this, it revolves around the great relevance of the decisions that will be rendered by the ANPD in the analysis of the equivalence criteria of the level of data protection provided by other nations or by private safeguards, provided for in clauses - contractual standards for the international transfer of personal data, as well as their validity and impacts on the Brazilian economy.

Thus, as a result of this work, it was possible to reach the following conclusions: (i) the genesis of the LGPD is economically motivated, both by the need to adhere to the guidelines imposed by the OECD, and by the need to maintain commercial transactions internationally with the EU; (ii) the GDPR imposes barriers to international transfer activities involving

personal data, since it requires that the other countries involved have a law whose level of protection for the protection of personal data is "adequate", in view of the European regulation; (iii) LGPD mirrored the framework brought by the GDPR regarding the criteria for the lawful transfer of data internationally; and (iv) just as in the case of "Schrems II", due to the rules provided for in the LGPD for the international transfer of personal data, Brazil can both victimize and be a victim of cases of revocation of standard contractual clauses, hindering operations and commercial relations, although the regulation of this topic is still needed from the competent Authority.

From all of the above, it is clear that a precedent of such relevance as the "Schrems II" case should serve as a valuable lesson to Brazil, as well as to the young and still very experienced ANPD, in the important mission of ensuring the protection of personal data of Brazilian citizens and national interests, including in the context of international transfers authorized by agreements and standard contractual clauses entered into with the aim of streamlining the flow of information at an international level.

Referências Bibliográficas

BIONI, Bruno Ricardo; FAVARO, Iasmine; RIELLI, Mariana. Por que a transferência internacional de dados tem que ser segura?. *Observatório Privacidade, [S. l.]*, 2020. Available at: https://observatorioprivacidade.com.br/2020/10/05/por-que-a-transferencia-internacional-de-dados-tem-que-ser-segura/. Accessed: 14 sep. 2024.

BRASIL. *Lei nº 13.709, de 14 de agosto de 2018, Lei Geral de Proteção de Dados – LGPD*. Brasília, DF: Presidência da República, 2018. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709.htm. Accessed: 14 sep. 2024.

CARVALHO, Ângelo Gamba Prata de. Transferência internacional de dados na Lei Geral de Proteção de Dados- Força normativa e efetividade diante do cenário transnacional. *In:* TEPEDINO, Gustavo; FRAZÃO, Ana; OLIVA, Milena Donato (org.). *Lei Geral de Proteção de Dados Pessoais e suas repercussões no direito brasileiro*. 1. ed. São Paulo: Thomson Reuters Brasil, 2019.

CASTELLS, Manuel. *A Sociedade em Rede*. 21. ed. São Paulo: Paz e Terra. 2020.

CONGRESSIONAL RESEARCH SERVICE. EU Data Transfer Requirements and U.S. Intelligence Laws: Understanding Schrems II and Its Impact on the EU-U.S. *Privacy Shield, [S. l.]*, 17 mar. 2021. Available at: https://crsreports.congress.gov/product/pdf/R/R46724. Accessed: 14 sep. 2024.

COTS, Márcio; OLIVEIRA, Ricardo. *Lei Geral de Proteção de Dados Pessoais Comentada.* São Paulo: Editora Revista dos Tribunais. 2018.

COUNCIL OF EUROPE. Full list - Treaty Office. *The Council of Europe, [S. l.], [S. d.]*. Available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b37. Accessed: 14 sep. 2024.

COX, Arthur. The Aftermath of Schrems II – Examining the EDPB's Draft Recommendations for International Data Transfers. *Arthur Cox, [S. l.]*, 2020. Available at: https://www.arthurcox.com/wp-content/uploads/2020/11/The-Aftermath-of-Schrems-II-2.pdf. Accessed: 14 sep. 2024.

DONEDA, Danilo. *Da privacidade à proteção de dados pessoais*: fundamentos da Lei Geral de Proteção de Dados. 2. ed. São Paulo: Thomson Reuters, 2019.

EUROPEAN COURT. "CJEU, Case C-362/14, Maximillian Schrems v Data Protection Commissioner". *InfoCuria, [S. l.]*, 6 oct. 2015. Available at: https://bit.ly/3qlz7aB. Accessed: 14 sep. 2024.

EUROPEAN UNION. Court of Justice. Press Release No 117/15. *InfoCuria, [S. l.]*, 2015. Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117en.pdf. Accessed: 14 sep. 2024.

GLITZ, Frederico Eduardo Zenedin. BREXIT, direito contratual europeu e Mercosul: lições para a integração. *Revista Novos Estudos Jurídicos*, v. 24, n. 2, 2018, p. 552. Available at: https://www.researchgate.net/publication/327427962_BREXIT_DIREITO_CONTRATUAL_EUROPEU_E_MERCOSUL_LICOES_PARA_A_INTEGRACAO. Acessed: 31 dez. 2024.

HERN, Alex. Facebook says it may quit Europe over ban on sharing data with US. *The Guardian*, Londres, 22 sep. 2020. Available at: https://www.theguardian.com/technology/2020/sep/22/facebook-says-it-may-quit-europe-over-ban-on-sharing-data-with-us. Accessed: 14 sep. 2024.

MCPHAIL, Thomas. *Convergence:* Information Society Brings Major Cultural Policy Issues. 3rd International Conference on Cultural Policy Research. Montreal: University of Montreal, 2004.

MASSENO, Manuel David. Das Consequências Jurídicas da Adesão do Brasil aos Princípios da OCDE para a Inteligência Artificial, Especialmente em Matéria de Proteção de Dados. *Revista Campo Jurídico*, Barreiras, v. 8 n. 1, 2020. Available at: https://www.researchgate.net/publication/350081023_Das_Consequencias_Juridicas_da_Adesao_do_Brasil_aos_Principios_da_OCDE_Para_a_Inteligencia_Artificial_Especialmente_Em_Materia_De_Protecao_de_Dados. Accessed: 14 sep. 2024.

MAX Schrems. *Wikipédia, [S. l], [S. d.]*. Available at: https://en.wikipedia.org/wiki/Max_Schrems. Accessed: 14 sep. 2024.

MILDEBRATH, Hendrik. The CJEU judgment in the Schrems II case. *European Parliamentary Research Service*, Brussels, 2020. Available at: https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/652073/EPRS_ATA(2020)652073_EN.pdf. Accessed: 14 sep. 2024.

NERY, Rosa Maria de Andrade; NERY JUNIOR, Nelson. *Instituições de Direito Civil:* volume 1: parte geral do código e direitos da personalidade. 2. ed. São Paulo: Thomson Reuters Brasil. 2019.

OECD. The OECD Privacy Framework. *OECD*, Paris, *[S. d.]*. Available at: http://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf. Accessed: 14 sep. 2024.

PARLAMENTO EUROPEU. Carta dos Direitos Fundamentais da União Europeia. *Jornal Oficial das Comunidades Europeias*, Brussels, 18 dez. 2000. Available at: https://www.europarl.europa.eu/charter/pdf/text_pt.pdf. Accessed 30 jan. 2021.

PARLAMENTO EUROPEU. Directiva 95/46/CE do Parlamento Europeu e do Conselho, de 24 de Outubro de 1995, relativa à protecção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados. *Jornal Oficial das Comunidades Europeias*, Brussels, 24 out. 1995. Available at: https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:31995L0046&from=EN. Accessed: 14 sep. 2024.

PARLAMENTO EUROPEU. General Data Protection Regulation (GDPR). *Intersoft Consulting, [S. l.]*, 2016. Available at: https://gdpr-info.eu/. Accessed: 14 sep. 2024.

SAKAMOTO, Maria Laura Grisi. International data transfer. An analysis of schrems cases I and II. *Seven Publications*, *[S. l.]*, 28 mar. 2023. Available at: https://sevenpublicacoes.com.br/editora/article/view/612. Accessed: 14 sep. 2024.

REDENBERG, Joel. E-commerce and transatlantic privacy. *Houston Law Review*, Houston, v. 38, 2001, p. 749. Available at: http://ir.lawnet.fordham.edu/faculty_scholarship/38. Accessed: 14 sep. 2024

TEÓFILO, Caroline; CABELLA, Daniela M. Monte Serrat. Schrems II e LGPD: reflexões acerca dos impactos da decisão da CJEU no cenário brasileiro. *Migalhas*, São Paulo, 13 ago. 2020. Available at: https://migalhas.uol.com.br/depeso/331982/schrems-ii-e-lgpd-reflexoes-acerca-dos-impactos-da-decisao-da-cjeu-no-cenario-brasileiro. Accessed: 14 sep. 2024.

TEWARI, Shreya. Schrems II – A brief history, an analysis and the way forward. *VerfBlog*, Berlin, 25 jul. 2020. Available at: https://verfassungsblog.de/schrems-ii-a-brief-history-an-analysis-and-the-way-forward. Accessed: 14 sep. 2024.

TZANOU, Maria. Schrems I and Schrems II: Assessing the Case for the Extraterritoriality of EU Fundamental Rights (October 13, 2020). *SSRN, [S. l.]*, 2020. Available at: https://ssrn.com/abstract=3710539. Accessed: 14 sep. 2024.

UNITED STATES OF AMERICA. Privacy Shield. *IAPP*, New Hampshire, 2016. Available at: https://iapp.org/media/pdf/resource_center/eu_us_privacy_shield_full_text.pdf.pdf. Accessed: 14 sep. 2024.

VARDANYAN, Lusine; STEHLÍK, Václav. Schrems II: will it really increase the level of privacy protection against mass surveillance?. *Bratislava Law Review*, Bratislava, v. 4, n. 2, p. 111-128, 2020. Available at: https://doi.org/10.46282/blr.2020.4.2.215. Accessed: 14 sep. 2024.

VIOLA, Mario. Transferência de dados entre Europa e Brasil: Análise da Adequação da Legislação Brasileira. *Instituto de Tecnologia e Sociedade do Rio*, Rio de Janeiro, 2020. Available at: https://itsrio.org/wp-content/uploads/2019/12/Relatorio_UK_Azul_INTERACTIVE_Justificado.pdf. Accessed: 31 dez. 2024.

ZANETTI DE OLIVEIRA, Dânton Hilário; FREITAS, Cinthia Obladen de Almendra. A proteção de dados pessoais como direito e garantia fundamental na Constituição da República de 1988. *In*: FERRAZ, Miriam Olivia Knopik; VETTORAZI, Karlo Messa (org.). *Direitos fundamentais e a era tecnológica* - Law Experience. 1. ed. Curitiba: FAE/Bom Jesus, 2020.

ZAPATA, Cristian Berrío. *Tecnologia da Informação, Discurso e Poder:* Análise de Domínio a partir do conceito de Exclusão Digital na perspectiva da Teoria Centro-Periferia. PhD Thesis in Information Science. Universidade Estadual Paulista "Júlio de Mesquita Filho" Faculdade de Filosofia e Ciências, Marília, 2015, 376 f.

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