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The protection of personal data

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The awareness of the importance of systemically protecting personal data began around 1990 decade, with the advent of the Information Society, as the result of the advancement of new information and communication technologies and the consequent globalization. The reason, the business models of the New Economy (the technology-based companies) started to be founded on the international flow of data, notably personal data.

Information has become the primary currency users exchange to access many specific goods, services or conveniences. The need for a specific law on the protection of personal data therefore arose from the way in which the current business model of the information society is sustained.

The leadership of the debates on the subject began with The Greens party in the European Union (EU) and was consolidated with the promulgation of the European General Data Protection Regulation No. 679 on April 27, 2016 (GDPR). The referred regulation established a two years of adaptation period by the society, until May 25,

2018, when it came into force, having as its main objective the protection of individuals with regards to the handling of personal data and the free movement of such data.

In its preamble the GDPR states that the protection of individuals with regards to the processing of their data is a fundamental right. Such a provision was already contained in the Charter of Fundamental Rights of the European Union, in the Treaty on the Functioning of the European Union and in the legislation of several countries.

In Brazil, the protection of personal data was already provided for many years in the constitutional text, in the Civil Code, in the Consumer Protection Code, in the General Telecommunications Law, in the Internet Civil Framework, in the Positive Registration Law and other legal instruments. It turns out that, until then,

the issue had been disciplined in a timely and non-systemic way, giving rise to the elaboration of a specific law on the subject.

In response to this demand, the Law No. 13,709/2018, originating from PLC No. 53/2018, known as the General Data Protection Act (LGPD), was enacted. This is a Brazilian legal framework of great relevance to public and private institutions, strongly influenced by the European Regulation on Personal Data Protection (GDPR).

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The LGPD provides for the protection of data of individuals in relationships involving operation of processing information considered as personal data, involving natural or legal person. Although its validity is independent of the medium, it reaches the digital media.

It establishes principles, rights and obligations in relation to the raw materials of the Information Society - personal data.

Promulgated on August 14, 2018, the LGPD amends the Law No. 12,965 of April 23, 2014 (Internet Civil Mark). It will be effective 24 months after its publication.

The *vacatio legis* is for the adaptation of society to the new rules both nationally and globally.

This law establishes controls that assure the fulfillment of the guarantees provided, based on the protection of human rights, such as freedom, privacy and the free development of the personality of the natural person. It is premised on good faith for all types of processing of personal data. It foresees a series of principles and assurances of technical control related to data governance, considering its life cycle.

Thus, there are several similarities between LGPD, GDPR and other laws on the matter, such as: the need to establish new paradigms regarding the assurance of the fundamental right to privacy provided for in the Universal Declaration of Human Rights, inserted in the new model of society; are based on transparency in the processing of data; provide for technical devices that enable the audit of privacy treatment and compliance, as well as the implementation of data governance and related control systems.

Finally, a key feature to be noted in the GDPR is its cascading effect as it determines that countries and their companies wishing to establish or maintain trade relations with the European Union must have legislation and rules of procedure (in the case of companies) on GDPR-compliant Personal Data Protection.

Those who do not adapt will suffer prohibitive barriers to the economic relationship with the countries of the referred block.

Protecting personal information is a fundamental right.



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This article is a result of the authors' ascertainment and analysis, without compulsorily reflecting CEST's opinion.