



## THE LEGAL TRANSPLANT OF EUROPEAN UNION GENERAL DATA PROTECTION REGULATION (“GDPR”) FOR BRAZILIAN LAW

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**Abstract:** This paper aims at making a brief comparative analysis between the General Data Protection Regulation of the European Union (“GDPR”) and Law n. 13709/2018 (the recently approved LGPD) to evaluate whether or not the law recently enacted in Brazil consists in the legal transplant of the model adopted in the European Union and, once the hypothesis of the legal transplant is confirmed, to analyze the introduction by the LGPD of an authorization to the processing and shared use of personal data by the Public Administration to implement public policies.

**Keywords:** Legal transplants; General Data Protection Regulation; Public Policies.

### 1 INTRODUCTION

As a rule, the legislative *iter* taken to a rational method of normative production depends on identifying a problem, determining the objectives and behaviors needed to solve that initial problem, establishing alternative scenarios, choosing the legal solution, an *ex post* evaluation of the effects that the norm has had on society or a specific jurisdiction, execution and retrospective evaluation (DELLEY, 2004, p. 101-102).

With globalization, social dynamism, urgent demand for legislative processes and rapid legal solutions with proven results, the process of transferring one rule from one legal system to another tends to be a form commonly adopted by the legislator in the normative production process. This is the so-called legal transplant<sup>1</sup>, which consists in “the moving of a rule or a system of law from one country to another” (WATSON, 1974, p.21).

This paper intends to make a brief comparative analysis between the General Data Protection Regulation (GDPR) and Law 13.709 / 2018 (the recently approved “General Data Protection Law or LGPD”), to assess whether national legislation consists of legal transplant of the European Union model and, once the transplant is recognized, to analyze the device introduced by the LGPD that authorizes the Public Administration to share and use personal data to implement public policies. (BRASIL, 2018).

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<sup>1</sup> The term legal transplant was coined by Alan Watson meaning “*the moving of a rule or a system of law from one country to another*”.

This study is justified, from the academic perspective, by the current theme. There are few studies specifically on this subject, which shows that there is a wide field for research and new approaches.

## **2 THE EUROPEAN UNION GENERAL DATA PROTECTION REGULATION AND THE BRAZILIAN GENERAL DATA PROTECTION LAW. WAS THERE TRANSPLAN?**

With the development of the digital economy and the increasing use of personal data by public and private companies in the commercialization of goods and services online, there is a certain difficulty in the legislation following the advances in the regulation of this market and the urgent need for greater transparency in the process of collection and processing of such data to ensure greater protection of the privacy of individuals<sup>2</sup>.

To this end, in 2016, the European Union published the General Data Protection Regulation (GDPR)<sup>3</sup>, in force since May / 2018, which applies to companies established in Europe and those located outside the Union, but offering goods or services to citizens residing there. Thus, Brazilian companies that process the data of those individuals are also subject to the GDPR regime.

Generally speaking, the GDPR regulates the processing and free movement of personal data of an identified or identifiable natural person consisting in the collection, storage and use of information that identifies or enables the identification of European individuals, such as name, number of identification, location data, electronic identifiers or other specific elements of the individual's physical, physiological, genetic, mental, economic, cultural or social identity<sup>4</sup>.

Considering that this paper intends to perform a brief comparative analysis of the GDPR with the data protection legislation recently approved in Brazil, the scope of the study is limited to evaluate some rules that, from our point of view, may have been object of transplant into the national legal system.

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<sup>2</sup> Available at: <<https://www.valor.com.br/empresas/5441139/facebook-vai-admitir-erros-ao-congresso-dos-eua>> Accessed on 01.06.2018. <<https://www.valor.com.br/empresas/6032717/facebook-permitiu-que-netflix-e-spotify-lessem-mensagens-privadas>> Accessed on 01.06.2018.

<sup>3</sup> We use for this work the Portuguese version of GDPR available at: <<https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A02016R0679-20160504>> Accessed on 01.01.2018.

<sup>4</sup> "Article 4° - Definitions

For the purposes of this Regulation:

1) «Personal data», means information relating to an identified or identifiable natural person («data holder. A natural person who can be identified, directly or indirectly, in particular by reference to an identifier, such as a name, identification number, location data, electronic identifiers or one or more specific elements of the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

2) «Processing», means an operation or set of operations carried out on personal data or personal data sets by automated or non-automated means such as collection, registration, organization, structuring, conservation, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or any other form of provision, comparison or interconnection, limitation, deletion or destruction"

Accordingly, the main provisions are: (i) scope of the Regulation for the protection of personal data and sensitive personal data<sup>5</sup>; (ii) the obligation of individuals to consent to the processing of their personal data<sup>6</sup>; (iii) the right to forgetfulness<sup>7</sup>; (iv) the impact assessment of data protection<sup>8</sup> when processing is likely to pose a risk to the individual rights and freedoms of individuals; (v) implementation of a corporate governance program for the formal registration of data processing, under its responsibility;<sup>9</sup> and (vi) sanctions for non-compliance with the rules set forth in the Regulations<sup>10</sup>.

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<sup>5</sup> Sensitive data, as provided for in Article 9 of the GDPR, include genetic, biometric, health, sexual life or sexual orientation data, as well as information on religious and political beliefs, among others.

<sup>6</sup> “Article 4 - Definitions

For the purposes of this Regulation:

11) « Consent » of the data holder means a free, specific, informed and explicit expression of willingness whereby the data holder accepts, by means of a declaration or unambiguous positive act, that personal data concerning him / her are subject to processing”. According to Article 7 of the GDPR, the request for consent must be concise, transparent, intelligible and accessible. In addition, consent must be given unambiguously and may be revoked at any time.

<sup>7</sup> “Article 17° - Right to delete data («right to be forgotten»)

1. The holder has the right to obtain from the controller the deletion of his or her personal data without undue delay and he / she shall have the obligation to delete the personal data without undue delay when one of the following reasons applies:

- a) personal data are no longer necessary for the purpose for which they were collected or processed;
- b) the holder withdraws the consent on which the processing of the data is based pursuant to Article 6.o, n.o 1, point a), or Article 9.o, n. 2, point a) and if there is no other legal basis for such processing;
- c) the holder objects to the processing in accordance with Article 21.o, n. 1 and there are no overriding legitimate interests to justify processing, or the holder opposes processing under Article 21.o, n. 2;
- d) Personal data were treated illicit;
- e) personal data must be deleted to comply with a legal obligation under Union or Member State law to which the controller is subject;
- f) personal data were collected in the context of the provision of information society services referred to in Article 8.o, n. 1.”

<sup>8</sup> “Article 35 ° 1. Where a certain type of processing, in particular using new technologies and having regard to their nature, scope, context and purposes, is likely to pose a high risk to the rights and freedoms of natural persons, the controller shall, before commencing processing, carry out an impact assessment of the planned processing operations on the protection of personal data. If a set of processing operations presenting similar high risks can be analyzed in a single assessment.”

<sup>9</sup> Article 30 ° - Records of processing activities

1. Each controller and, where appropriate, his / her representative shall keep a record of all processing activities under his / her responsibility. This register contains all the following information:

- a) The name and contact details of the controller and, where appropriate, any joint controller, the controller representative and the data protection officer;
- b) The purposes of the data processing;
- c) The description of the data holder categories and the personal data categories;
- d) The categories of recipients to whom personal data have been or will be disclosed, including recipients established in third countries or international organizations;
- e) Where applicable, transfers of personal data to third countries or international organizations, including the identification of such third countries or international organizations and, in the case of transfers referred to in Article 49.o, n. 1, second paragraph, documentation proving the existence of adequate safeguards;
- f) If possible, the time limits for deleting the different categories of data;
- g) If possible, a general description of the technical and organizational security measures referred to in Article 32.o, n. 1.

<sup>10</sup> Article 83° - General conditions for the imposition of fines

1. Each supervisory authority shall ensure that fines pursuant to this Article for infringements of this Regulation referred to in. 4, 5 and 6 and, in each individual case, effective, proportionate and dissuasive.

Article 84.o - Sanctions

1. Member States shall lay down the rules on other penalties applicable to infringements of the provisions of this Regulation, including infringements, which are not subject to fines pursuant to Article 79.83.o, and shall take all measures necessary to ensure that they are implemented. your application. The penalties provided for must be effective, proportionate and dissuasive.

Law No. 13,709 / 2018 (“General Data Protection Law or LGPD”) was strongly inspired by the GDPR and largely reproduces it, including the provisions cited in the previous paragraph. LGPD broadly introduces the principles that should guide the processing of personal data<sup>11</sup>, covers the protection of the processing of personal<sup>12</sup>, sensitive<sup>13</sup> and children’s<sup>14</sup>, data, authorizes

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<sup>11</sup> Article 6° The processing of personal data activities shall observe good faith and the following principles:

I - purpose: carrying out the processing for legitimate, specific, explicit and informed purposes to the holder, without the possibility of further processing incompatible with those purposes;

II - adequacy: compatibility of the processing with the purposes informed to the holder, according to the processing context;

III - need: limitation of the processing to the minimum necessary for the accomplishment of its purposes, with the comprehensiveness of the relevant data, proportional and not excessive in relation to the purposes of the data processing;

IV - free access: guarantee to holders, free and easy consultation about the form and duration of processing, as well as the completeness of their personal data;

V - data quality: guarantee to the holders, accuracy, clarity, relevance and updating of the data, according to the need and for the fulfillment of the purpose of its processing;

VI - transparency: guarantee to the holders, clear, accurate and easily accessible information about the processing and the respective processing agents, observing the commercial and industrial secrets;

VII - security: use of technical and administrative measures capable of protecting personal data from unauthorized access and accidental or unlawful destruction, loss, alteration, communication or dissemination;

VIII - prevention: adoption of measures to prevent the occurrence of damage due to the processing of personal data;

IX - non-discrimination: the impossibility of carrying out the processing for illicit or abusive discriminatory purposes;

X - liability and accountability: Demonstration by the agent of the adoption of effective measures capable of proving compliance with and compliance with personal data protection rules, including the effectiveness of such measures.

<sup>12</sup> Article 7° The processing of personal data may only be performed in the following cases:

I - by providing consent by the holder;

II - for the fulfillment of legal or regulatory obligation by the controller;;

III - by the public administration, for the processing and shared use of data necessary for the execution of public policies provided for in laws and regulations or supported by contracts, agreements or similar instruments, subject to the provisions of Chapter IV of this Law;

IV - to carry out studies by research body, ensuring, whenever possible, anonymization of personal data;

V - when necessary for the performance of the contract or preliminary procedures related to the contract to which the holder is party, at the request of the data holder;

VI - for the regular exercise of rights in judicial, administrative or arbitral proceedings, the latter pursuant to Law No. 9,307, of September 23, 1996 (Arbitration Law);

VII - to protect the life or physical safety of the holder or third party;

VIII - for the protection of health, in a procedure performed by health professionals or health entities;

IX - when necessary to meet the legitimate interests of the controller or third party, except in case the fundamental rights and freedoms of the holder that require the protection of personal data prevail; or

X - for credit protection, including the provisions of the relevant legislation.

<sup>13</sup> Article 11. The processing of sensitive personal data may only take place in the following cases:

I - when the holder or his / her legal guardian specifically and prominently consents to specific purposes;

II - without providing consent from the holder, in the cases in which it is indispensable for::

a) compliance with legal or regulatory obligation by the controller;

b) shared processing of data necessary for the public administration to execute public policies provided for in laws or regulations;

c) conducting studies by a research body, ensuring, whenever possible, the anonymization of sensitive personal data;

d) regular exercise of rights, including by contract and in judicial, administrative and arbitral proceedings, the latter pursuant to Law No. 9,307, of September 23, 1996 (Arbitration Law);

e) protection of the life or physical safety of the holder or third party;

f) health supervision, in a procedure performed by health professionals or health entities;

g) guarantee of fraud prevention and security of the holder, in the processes of identification and authentication of registration in electronic systems, safeguarding the rights mentioned in article 9° of this Law and except where the fundamental rights and freedoms of the holder that require the protection of personal data prevail.

Paragraph 1° The provisions of this article shall apply to any processing of personal data that reveals sensitive personal data and may cause damage to the holder, except as provided in specific legislation.

<sup>14</sup> Article 14. The processing of personal data of children and adolescents shall be carried out in their best interest, in accordance with this article and the relevant legislation.

Paragraph 1° The processing of personal data of children shall be carried out with the specific and prominent consent given by at least one parent or legal guardian.

Paragraph 2° In the processing of data referred to in paragraph 1 of this article, the controllers shall keep public the information on the types of data collected, the form of their use and the procedures for the exercise of the rights referred

the processing of personal data by the Public Administration to enforce public policies<sup>15</sup>, determine the security measures<sup>16</sup> and good practices<sup>17</sup> required to safeguard the registration of personal data and impose applicable sanctions for breach of law<sup>18</sup>. (BRASIL, 2018).

Specifically with regard to the consent of the individual, as a means to legitimize the processing of personal data, LGPD innovates by determining that the controller bears the burden of proving consent<sup>19</sup>, that is, it is not enough to obtain the free and unambiguous consent of the data holder, the controller should be transparent and inform the person of what will be done with their personal data:

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to in article 18 of this Law.

<sup>15</sup> Article 7º The processing of personal data may only be performed in the following hypotheses: (...)

III - by the public administration, for the processing and shared use of data necessary for the execution of public policies provided for in laws and regulations or supported by contracts, agreements or similar instruments, subject to the provisions of Chapter IV of this Law;

<sup>16</sup> Article 46. Processing agents shall adopt security, technical and administrative measures capable of protecting personal data from unauthorized access and accidental or unlawful destruction, in the event of loss, alteration, communication or any form of improper or unlawful processing.

<sup>17</sup> Article 50. Controllers and operators, within the scope of their competences, for the processing of personal data, individually or through associations, may formulate rules of good practice and governance that establish the conditions of organization, the operating regime, the procedures, including holder complaints and petitions, safety standards, technical standards, specific obligations for the various parties involved in processing, educational actions, internal supervisory and risk mitigation mechanisms and other aspects related to the processing of personal data. (...)

Paragraph 2º In the application of the principles indicated in items VII and VIII of the caput of article 6 of this Law, the controller, observing the structure, scale and volume of its operations, as well as the sensitivity of the data processed and the probability and severity of the damage to the data holders, may:

I - implement a privacy governance program that, as a minimum:

- a) demonstrate the controller's commitment to adopt internal processes and policies that ensure comprehensive compliance with standards and good practices regarding the protection of personal data;
- b) apply to any set of personal data under control, regardless of how it was collected;
- c) be adapted to the structure, scale and volume of operations, as well as the sensitivity of the data processed;
- d) establish appropriate policies and safeguards based on the process of systematic impact and privacy risk assessment;
- e) has the objective of establishing a relationship of trust with the holder through transparent action and ensuring mechanisms for the holder's participation;
- f) is integrated with its general governance structure and establishes and applies internal and external oversight mechanisms;
- g) rely on incident response and remediation plans; and
- h) is constantly updated based on information obtained from continuous monitoring and periodic evaluations;

<sup>18</sup> Article 52. Data controllers, due to infringements of the rules provided for in this Law, are subject to the following administrative sanctions applicable by the national authority:

I - warning, indicating the deadline for the adoption of corrective measures;

II - simple fine of up to 2% (two percent) of the revenues of the legal entity of private law, group or conglomerate in Brazil in its last year, excluding taxes, limited to a total of R \$ 50,000,000.00 (fifty million reais) for infringement;

III - daily fine, observing the total limit referred to in item II;

IV - publicizing the infraction after duly ascertained and confirmed its occurrence;

V - block the personal data to which the infringement refers until its regularization;

VI - deletion of the personal data to which the infringement refers;

<sup>19</sup> Article 8 The consent provided for in item I of article 7º of this Law shall be provided in writing or by other means demonstrating the holder's manifestation of will.

Paragraph 1. If consent is given in writing, it shall be included in a clause highlighted in the other contractual clauses. Paragraph 2. The controller shall bear the burden of proving that consent was obtained in accordance with the provisions of this Law.

Companies that are responsible for databases will have to set up technology structures that guarantee the archiving of consent, as well as the fulfillment of other rights now granted to the holder. According to the previous rules, consent should be prior and express, that is, provided prior to the start of processing and manifestly by the data holder. Now, however, with the qualification as “free, informed and unambiguous” (and in some cases specific), consent must be given without any will, with the holder provided with all the information necessary to provide it and unambiguously. That is, the legislator's focus is on the data holder's awareness of what will be done with his or her personal data by the controllers, and it demands transparency from the controllers on this issue. In the new law, consent abandons its central position in Brazilian data protection and is placed horizontally in relation to the other hypotheses of processing listed (EJNISMÁN; LACERDA, 2019).

Finally, Provisional Measure 869 of 12.27.2018 created the National Data Protection Authority (“ANPD”)<sup>20</sup>, not a regulatory agency with regulatory, adjudicatory and supervisory autonomy, but a body linked to the Federal Public Administration, endowed exclusively with technical autonomy.

Having made these brief considerations on the main provisions of both legal rules, let us proceed to the institute of legal transplant, according to foreign and national doctrine, to confirm whether the rules provided for in the GDPR have been incorporated into our legal system, in the form of Brazilian General Data Protection Law.

The legal transplant thesis developed by WATSON is not peacefully accepted by the theories of comparative law, notably by LEGRAND, who does not even acknowledge the existence of the institute. According to comparators “Legal-modification-as-legal-transplant disconnects the law from its historical, epistemological or cultural background and conceives the rules as empty propositional statements” (LEGRAND, 2014, p.16-17).

On such grounds, the importation of legal solutions and legislative texts from another country without concern for the historical and cultural values of the destination country may result in the inapplicability of imported or transplanted law (XANTHAKI, 2008, p.659). On the other hand, there are comparatists allied to the contextual movement who already recognize the possibility that laws, constitutions, institutions and ideas migrate from one context to another and suggest the expression “migration” as more appropriate to be adopted in this context of movement of constitutional ideas between systems (FRANKENBERG, 2010, p.570).

Other authors, such as JHERING, KHOTZ and ZWEIGERT (1971, p.215-231), see the question from the perspective of functionality, that is, what matters is whether legal transplant will serve to meet a social need in the destination country. For advocates of functional theory, it is indifferent to know the legal system from which a legal solution is borrowed or to compare the similarities between the country of origin and the country that will receive that legislative text.

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<sup>20</sup> Article 55-A. The National Data Protection Supervisor - ANPD, a federal public administration body that is a member of the Presidency of the Republic, is created without increasing expenses.

CAPPELETTI and SIQUEIRA (2016, p.17), in turn, maintain that “the Brazilian legal system seems to be characterized by a strong openness to foreign law and, at the same time, a strong interest in what is used in its legislative design”. They even consider as possible justification for legal transplants the fact that Brazil was a colonized and not a colonizing country. Despite all the doctrinal debate about the degree of reliance on transplanted rules for their legal, economic and social environment, I disagree with the position that the rules are empty provisions of no significance and that transplants do not in fact occur as comparatists.

I follow Papadopoulou's (2016, p.894) understanding that it is possible to evolve to reach a break-even point or a middle ground with transplants heuristically called botanists. The rules may shift, but their meaning fits in with the values of the importing country, provided they are not at all inconsistent with their meaning in the country of origin.

According to what was observed by the comparative analysis between national and foreign legislation, it can be concluded that the European Union data protection regime may have been transferred to the Brazilian scenario, as the GDPR rules have a compatible meaning and are fully adaptable to the Brazilian model. Thus, it is understood that once the legal transplant is completed, in the botanical sense, there will be no negative impacts on the uniformity and harmonization process between the national and European legal system.

### **3 PROCESSING AND SHARED USE OF PERSONAL DATA FOR THE IMPLEMENTATION OF PUBLIC POLICIES**

Legislative production need not be creative and innovative all the time. Importing a ready-made model, especially if already tested, which works in another legal framework, simply adapting its terms to the needs of the destination country, allows the legislative process to keep pace with technological innovations and to respond more dynamically to social demands.

Brazilian law, while "copying" the regime of protection and processing of personal data instituted by the GDPR, inaugurates the possibility of processing and shared use of data necessary for the execution of public policies by the Public Administration<sup>21</sup>.

Public policy consists of the “decision made by government actors, with authority and subject to sanctions”, based on the concept of VALLE (2009, p.36), the main elements of public policy are already delineated, namely, the research of methods for formulating choice, the actors in this process, and the possible consequences of the power's departure from the original guiding. The process of drafting public policy and building a system to guide this process was well

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<sup>21</sup> Article 7 °. The processing of personal data may only be performed in the following hypotheses: (...) III - by the public administration, for the processing and shared use of data necessary for the execution of public policies provided for in laws and regulations or supported by contracts, agreements or similar instruments, subject to the provisions of Chapter IV of this Law;

addressed by THEODOULOU who divided the process into 6 stages of activities, which can be recognized as the public policy cycle. They are:

1. recognition of the problem and identification of the issues: identification of the fact or factual situation that requires state intervention that, once legitimized, become issues;
2. agenda setting: setting priorities for public action, the issue at this stage reaches serious status;
3. Public policy formulation: With the identification of the problem in the first stage, it is time to explore possible action proposals to address the issues on the agenda;
4. choice of public policy to be implemented: implementation of the decision on the action line to be adopted, based on the indication of which one produces the optimization of efforts and / or benefits considering the available resources;
5. implementation of public policy: moment of execution of the action proposals indicated in the formulation and chosen in the next phase;
6. analysis and evaluation of public policy: At this stage, the results achieved with the policy are diagnosed, the action taken is legitimized, and its adaptation to future actions is allowed (THEODOULOU, 1995, p. 86-87)

It is understood that the rational decision-making process in the normative production may be improved with the ability to share information contained in personal databases by the Public Administration<sup>22</sup>, as authorized by LGPD<sup>23</sup>. It explains:

During the public policy cycle, especially at an early stage when the problems or issues that determine policy formulation are identified, isolated and classified, the use of information from personal databases in a particular municipality, for example, may be extremely useful for improving the provision of public transport service in the locality.

Suppose the data stored in the “single ticket” municipal database of residents of a specific region is collected by mapping and evaluating the passenger mobility system used: (i) the daily commute by users, (ii) the evaluation of which transportation system is most used (bus, subway or ferry) and (iii) the most commonly used bus lines or those that serve fewer passengers. Such an assessment would make it possible to determine how best to serve users in that region by providing public passenger transport services.

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<sup>22</sup> Article 5 °. For the purposes of this Law, the following shall be considered:

X - processing: any operation performed with personal data, such as data collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, archiving, storage, deletion, evaluation or control of information, modification, communication, transfer, diffusion or extraction. (...)

XVI - shared use of data: communication, dissemination, international transfer, interconnection of personal data or shared processing of personal databases by public bodies and entities in the fulfillment of their legal powers, or between them and private entities, mutually, with specific authorization, for one or more processing modalities allowed by these public entities, or between private ones;

<sup>23</sup> Article 23. The processing of personal data by legal entities governed by public law referred to in the single paragraph of article 1 ° of Law n° 12,527, of November 18, 2011 (Access to Information Law), shall be carried out for the fulfillment of its public purpose, in the pursuit of the public interest, with the purpose of perform the legal competences or fulfill the legal duties of the public service, provided that:

I - inform the hypothesis that, in the exercise of their competences, they carry out the processing of personal data, providing clear and up-to-date information on the legal provision, purpose, procedures and practices used to perform these activities, in vehicles of easy access, preferably on their websites;

II - (VETOED); and

III - supervisor is appointed when performing personal data processing operations, pursuant to article 39 of this Law.



It would be possible, for example, to consider (i) whether the provision of the road transport service should be maintained or reduced, given the significant increase of passengers’ displacement by the subway system; (ii) the possibility of excluding or reducing the number of certain bus lines, which are no longer used by passengers in that locality due to the opening of a subway station, which increased the use of this means of transport in the daily commute of users; or (iii) expand a road line that serves few users and extends it to a more remote region, increasing the number of users of the locality served by the transport service

These are measures that, depending on the public policy to be implemented, may impact the reduction of costs employed in services that do not serve the users of the site and allow the increase of significant investments in improving the quality of service considered a priority, that is, those that, according to the information shared by the municipality’s personal database, best serve the interest of that particular community.

Certainly, the issue is still recent and open to debate, especially regarding the consent of the individual (in this case, the user of the public service) and how to store the information collected in the databases for processing and shared use by the Public Administration. With regard to the consent and control of personal information there is already understanding that as LGPD grants natural persons control over their personal information, it will be up to individuals to decide which information to submit to the general public. See:

What can be seen, therefore, is that LGPD is based on the idea of the right to informational self-determination, which, as a corollary of human rights, consists in guaranteeing to individuals the control over their personal information, it is up to individuals to decide which of their information should be submitted to the public (CYRINO; LEITE, 2018, p. 405-406).

It should be acknowledged, however, that the regulation of the subject could assist in the rational decision making process and even be decisive to promote the choice of the best course of action to be implemented in the execution of public policies<sup>24</sup>. The *ex post* analysis and evaluation of public policy, the last stage of this cycle, may also be a decisive factor in giving credibility to the innovation brought by LGPD.

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<sup>24</sup> Art. 25. Data shall be kept in an interoperable format and structured for shared use, with a view to the execution of public policies, the provision of public services, the decentralization of public activity and the dissemination and access of information by the general public.

Art. 26. The shared use of personal data by the Public Administration must meet specific purposes of public policy execution and legal attribution by public bodies and entities, respecting the principles of protection of personal data listed in art. 6th of this Law.

#### 4 CONCLUSION

Law No. 13,709 / 2018 (“General Data Protection Law or LGPD”) was strongly inspired by the GDPR and largely reproduces it. Based on PAPADOPOULOU's concept of legal transplant, an understanding to which I subscribe, rules may shift, but their meaning may adapt to the values of the importing country, provided they are not at all inconsistent with their meaning in the country of origin.

According to what was observed by the comparative analysis between national and foreign legislation, it can be concluded that the European Union data protection regime may have been transferred to the Brazilian scenario, as the GDPR rules have a compatible meaning and are fully adaptable to the LGPD model.

Thus, it is understood that once the legal transplant is completed, in the botanical sense, there will be no negative impacts on the uniformity and harmonization process between the national and European legal systems.

Brazilian law, while having “copied” the regime of protection and processing of personal data instituted by GDPR, inaugurates the possibility of processing and shared use of data necessary for the execution of public policies by the Public Administration.

It is understood that the rational decision making process in the normative production can be improved with the resource sharing information contained in personal databases by the Public Administration, as authorized by LGPD.

During the public policy cycle, especially at the early stage when the problems or issues that determine policy formulation are identified, isolated and classified, the use of information stored in personal databases in a particular municipality relating to the use of “single ticket” by local residents, for example, could be extremely useful in improving the provision of public transport services in the region by mapping and evaluating the passenger mobility system used.

Depending on the public policy to be implemented, decisions made based on the collected data may impact the reduction of costs employed in services that do not serve the users of the site and allow the increase of significant investments in improving the quality of service considered a priority for the municipality.

The issue is still recent and open to debate, especially regarding the consent of the individual (in this case, the user of the public service) and the way of storing the information collected in the databases for processing and shared use by the Public Administration.

It should be acknowledged, however, that the regulation of the subject could assist in the rational decision making process and even be decisive to promote the choice of the best course of action to be implemented in the execution of public policies. The *ex post* analysis and evaluation of public policy, the last stage of this cycle, may also be a decisive factor in giving credibility to the innovation brought by LGPD.

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