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# Open Banking

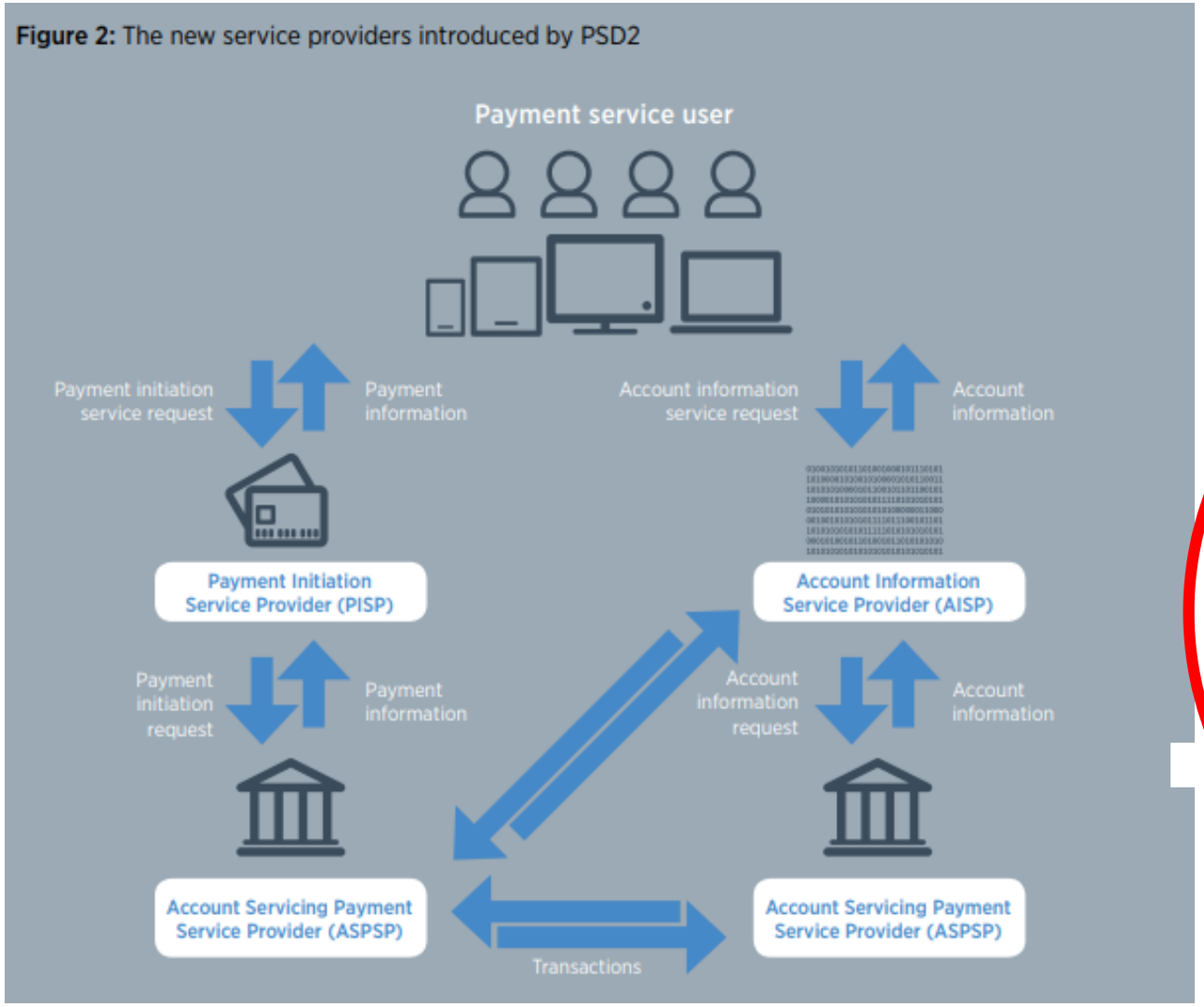
## A challenge to ensure informed and adequate consent from consumers concering data collection, use and sharing

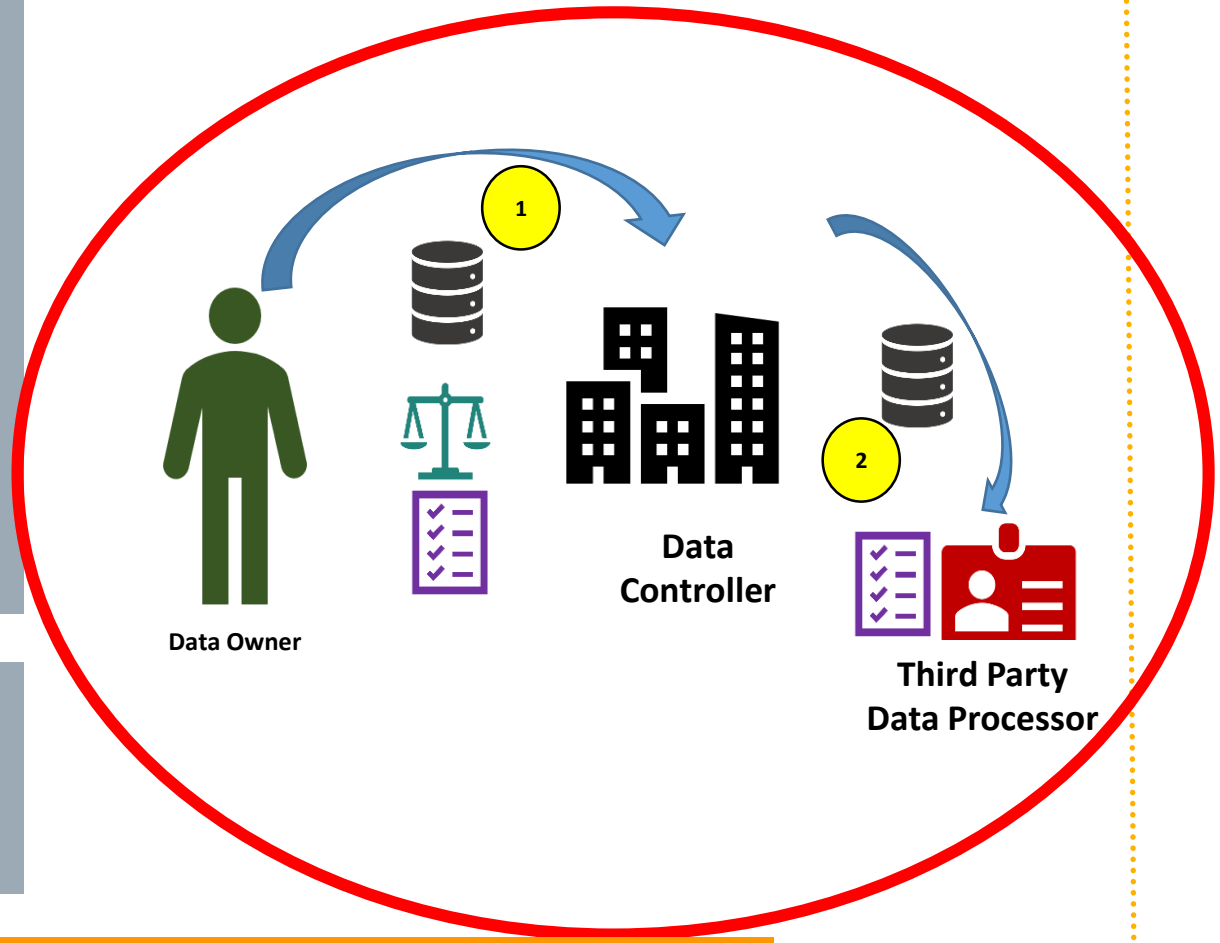
Certified by EXIN
Privacy & Data Protection Foundation

**Patrícia Peck Pinheiro, Ph.D**

# BUSINESS INNOVATION

# OPEN DATA FLOW




**How and when collect the consent from the consumer?**

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# DATA LAKE - PERSONAL DATA ANALITCS

**Information is essencial!**

BANK | STORE | CREDIT

INSURANCE | INDUSTRY | TELECOM

=

SCORE DATA

SOCIAL MEDIA DATA

COOKIES

BEHAVIOR

IDs

GPS

**Datalake**

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# LGPD: Law 13.709/2018
# New Regulations demands TRANSPARENCY!

- A new Corporate governance based on **DATA ETHICS**!

- Public and Private Sectors have to **comply to Privacy and Cyber Security**

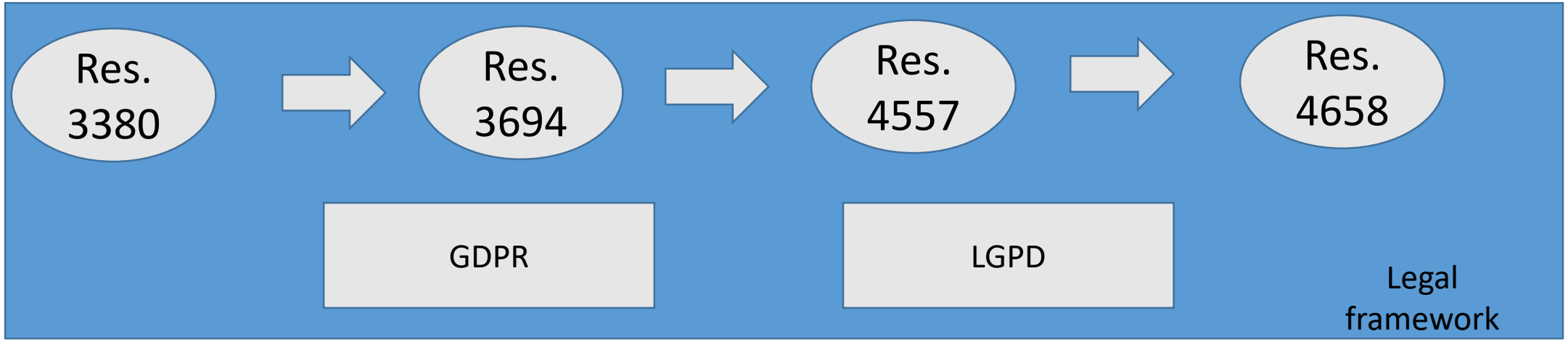
- **Personal Data Protections brings new rights and new principles such as:**
  - **Minimize data use**
  - **Anonimize data**
  - **Eliminate data**
  - **Right to be forgotten**
  - **Right to portable data**
  - **Duty to report incidents related to personal data leak or exposure**

# Risk Management and Liability

**How determine who is responsible if the client clains unauthorized access to the account?**

**How determine the minimal protections necessary to apply in order to prevent data leak when dealing with Open Data Marketplace (API)?**

**How determine the limits of liability related to API and DataLake operations?**



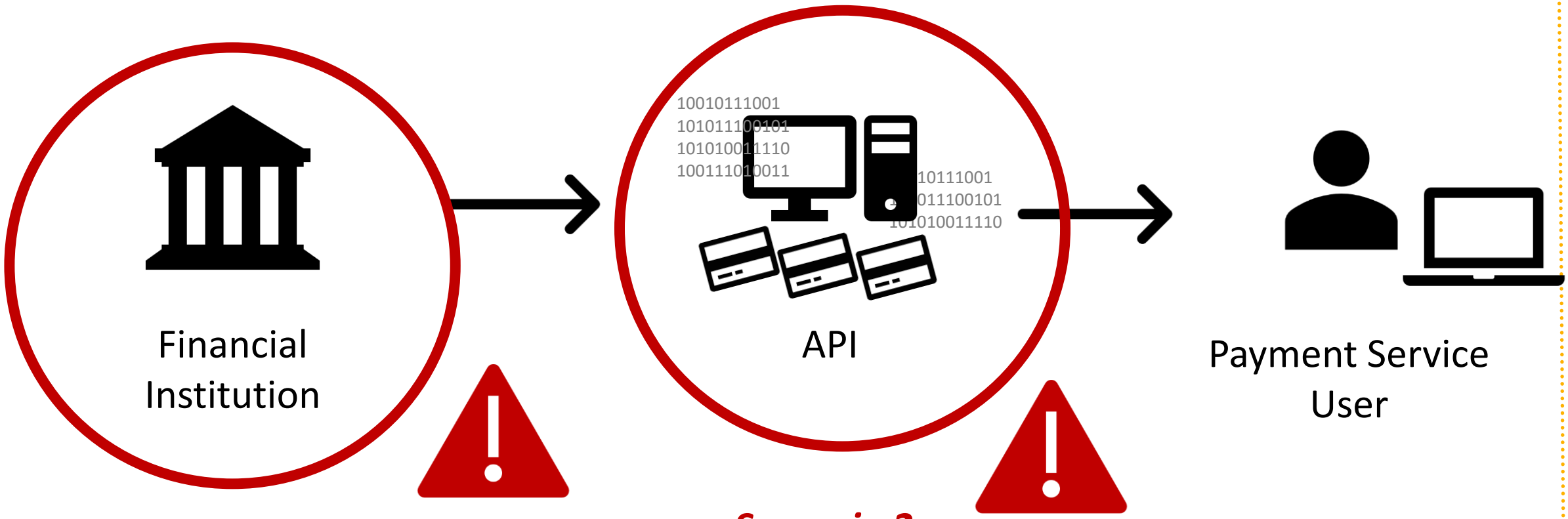
The main issue is related to the huge flow of user´s open data that happens in a Open Banking environment.

**Benefits: free competition**

**Risks: cyber security, privacy, data protection and discussion over liability**

Although, the relationship of the services of the AISP and PISP is not always subornidated to a contract.

# *Who should be responsible?*




***Scenario 1***
***Data breach***

***Scenario 2***
***Data breach***

**How is the Incident Report Workflow?**
**How apply Bacen Res. 4658?**
**How comply to LGPD Regulation?**

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# In Brazil…about Liability

**Superior Court Understanding n. 479/2012.** **Financial Institutions** are objectively responsible for damages caused by incidents involving fraud and crimes committed by third parties in the course of banking operations.

*Nº 71006092852 (Nº CNJ: 0019735-67.2016.8.21.9000)*

**INOMINATED APPEAL. consumer. bank contract Action of damages of accumulated with indemnity for moral damages. credit card. not authorized by the account holder. supposed electronic fraud. FINANCIAL INSTITUTION'S BURDEN TO DEMONSTRATE THE REASON FOR THE TRANSACTION BY THE HOLDER OF THE ACCOUNT. RESPONSIBILITY OF THE BANK. INTELLIGENCE OF THE SÚMULA no. 479 OF STJ. SIMPLE RETURN OF VALUE. moral damages characterized in the specific case. quantum indemnification fixed at R$ 4,200.00 reduced to R$ 2,000.00.**

https://tj-rs.jusbrasil.com.br/jurisprudencia/356301288/recurso-civel-71006092852-rs/inteiro-teor-356301303?ref=juris-tabs

**Bank's Trainee has access to the manager's password and transfers R$ 100 thousand to her own account, get cought and go to prison!**

# Estagiária usa senha de gerente, transfere cerca de R$ 100 mil para contas dela e de parentes em MT e é detida

Adolescente de 16 anos recebia R$ 630 por mês, no entanto, em sua conta corrente havia R$ 42 mil.Segundo a polícia, ela foi autuada por furto qualificado.

**Por G1 MT**

08/08/2018 16h19 · Atualizado há 2 meses

Uma adolescente de 16 anos, que trabalhava como estagiária em uma agência bancária no município de Juína, a 737 km de Cuiabá, foi detida na segunda-feira (6), suspeita de ter transferido cerca de R$ 100 mil para a conta dela e de parentes.

*Nº 71006092852 (Nº CNJ: 0019735-67.2016.8.21.9000)*

**"The defendant did not surround itself with the necessary caution that every banking institution should have in order to avoid any use of consumer data by a third party in bad-faith, which today must be a mandatory behavior in view of the most varied types of frauds that are daily applied, involving situations of this nature. However, notwithstanding possible fraud, it should instead be responsible for non-compliance with the precautions required for banking operations, and it is inadmissible to carry out transactions of bank account amounts of customers without the security required to preserve the accountant from incurring possible financial losses."**

https://tj-rs.jusbrasil.com.br/jurisprudencia/356301288/recurso-civel-71006092852-rs/inteiro-teor-356301303?ref=juris-tabs

# In conclusion…

**The regulation on Open Banking should bring more legal security regarding liability mitigation to the Financial Institution, once the API has responsibility on providing a platform that should comply with safety requirements for their users.**

# THANK YOU!

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