

THE IMPACT OF THE BRAZILIAN GENERAL DATA PROTECTION LAW TO MEASURE SUSTAINABILITY CONSUMPTION

O IMPACTO DA LEI GERAL DE PROTEÇÃO DE DADOS BRASILEIRA PARA MENSURAR O CONSUMO SUSTENTÁVEL

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Abstract: The research analyzes the difference between data and information, focusing on the economic value of information related to consumer relations. Then, it explores the Brazilian General Law for the Protection of Personal Data and, finally, discusses if these data and information can impact sustainable production and consumption patterns and change the reality of the indicators of Sustainable Development Goal 12, questioning which data and information protection can influence them. It is a scholarly review article with an exploratory and deductive methodology.

Keywords: Data and information. Sustainable Consumption. Brazilian General Law for the Protection of Personal Data.

Resumo: A pesquisa analisa a diferença entre dado e informação, tendo o foco de que há valor econômico para as informações relativas às relações de consumo. Em seguida, analisa a Lei Geral de Proteção dos Dados Pessoais e, por fim, discute se estes dados e informações podem impactar os padrões de produção e consumo sustentáveis e alterar a realidade dos indicadores do Objetivo do Desenvolvimento Sustentável 12, questionando se a proteção de dados e informações pode influenciá-los ou não. É um artigo de revisão literária com metodologia exploratória e método dedutivo.

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Palavras-Chave: Dados e informação. Consumo Sustentável. Lei Geral de Proteção dos Dados Pessoais.

INTRODUCTION

Global society is aware that the natural resources available are finite. The concern of all countries and the population's well-being made governments seek a balance point to equate the situation. In 2015, the 17 Sustainable Development Goals (SDGs) emerged within a 2030 global agenda. The SDGs are goals that involve all UN countries to ensure development as an international economic, social, cultural, and political process.

The SDGs establish goals and guidelines to be achieved. To audit whether or not the SDGs have been completed, each country chooses a methodology and highlights how it will pursue the goals within its action plan. Once the action plan is implemented, the effects are organized and disseminated on each country's SDG Platform. These effects converted into numbers are called national indicators. Such indicators need information on developing action plans, which are converted into data. After the OECD audit, the degree of development of each country is established.

In Brazil, the entity responsible for informing society about the action plans and disseminating the results after analyzing them is IPEA. When observing the information presented by IPEA, from the perspective of the use of data and information to show the national indicators, one must take into account their importance in the face of their use, treatment, purposes, and risks arising in the context of consumer relations between companies and their holders, in addition to the rights and duties of the Brazilian General Data Protection Law (LGPD).

The research is justified in the importance of protecting personal data and in the possibility that the article contributes to the guidelines of control of the storage, processing, and transmission of information suitable for the country. The high economic value of consumer information is known, and impacts society can use data and information to increase consumer demand or develop consumer awareness.

In this context, the research core question is: *Through the treatment of consumerist information, can the Brazilian General Law for the Protection of Personal Data contribute to acculturate patterns of sustainable consumption?*

The general objective of the research is to study how national indicators receive data from consumer relations and transform them into information to meet the methodology chosen by the Brazilian government. Furthermore, the work has the following specific objectives: (i) to analyze the information as a value in consumer relations; and (ii) with a focus on socio-economic development to identify how information is used in national indicators.

The methodological approach is bibliographic and exploratory research. The method is deductive so that the research objectives are achieved.

As for the expected results, it is intended to reflect on the patterns of sustainable production and consumption of the 2030 Agenda, particularly the goals established in SDG 12.

1 SUSTAINABLE DEVELOPMENT GOAL 12 (SDG 12) - ENSURE SUSTAINABLE PRODUCTION AND CONSUMPTION PATTERNS

From September 25 to 27, 2015, in NYC, the UN General Assembly adopted the 2030 Agenda for Sustainable Development, an action plan in favor of people, the planet, and prosperity, which also intends to strengthen universal peace and access to justice.

The Member States of the United Nations approved a resolution in which they recognize that the most significant challenge in the world today is eradicating poverty and affirm that without achieving it, there can be no sustainable development.²

The plan proposes 17 (seventeen) Objectives with 169 (one hundred, sixty-nine) goals of an integrated and indivisible nature that cover the economic, social, and environmental spheres.

The new strategy will govern global development programs for the next 15 (fifteen) years. By adopting it, States committed to mobilizing the necessary means for its implementation through partnerships focused primarily on the needs of the poorest and most vulnerable.

Among the sustainable development objectives, this research highlights SDG 12 (twelve), which deals with “ensuring sustainable production and consumption patterns,” which has as a goal the implementation of the “(...) and Sustainable Consumption, with all countries taking action, and

² UNITED NATIONS. La Asamblea General adopta la Agenda 2030 para el Desarrollo Sostenible. Available at <https://www.un.org/sustainabledevelopment/es/2015/09/la-asamblea-general-adopta-la-agenda-2030-para-el-desarrollo-sostenible/> Accessed on Agosto 24 2020.

developed countries taking the lead, taking into account the development and capabilities of developing countries.”³

Among the other goals set out with the scope of ensuring sustainable production and consumption standards, we highlight the encouragement of companies, massive and transnational companies, to adopt sustainable practices and integrate sustainability information into their reporting cycle. Another relevant goal concerns ensuring that “(...) people, everywhere, have relevant information and awareness for sustainable development and lifestyles in harmony with nature.”⁴

It is observed that in the 2030 Agenda, when the national indicators are explained, the importance of data and information in helping to measure the progress and development of the plan itself was pointed out.⁵

The importance of data and information is highlighted. It is also clarified that the communication mechanisms must be accessible, updated, and reliable. The intrinsic value of information is perceived, especially in measuring progress and development and in the equalization of methodologies between countries. Therefore, the information constitutes a kind of economic good, which can be viewed and used in consumer relations.

For example, the methodological basis for measuring SDG 12 in the USA is shown below; in the Spring term, BDO USA, LLP,⁶ organized a questionnaire for the clients to understand the situation of digital consumers. Have a look at the methodology and numbers below:

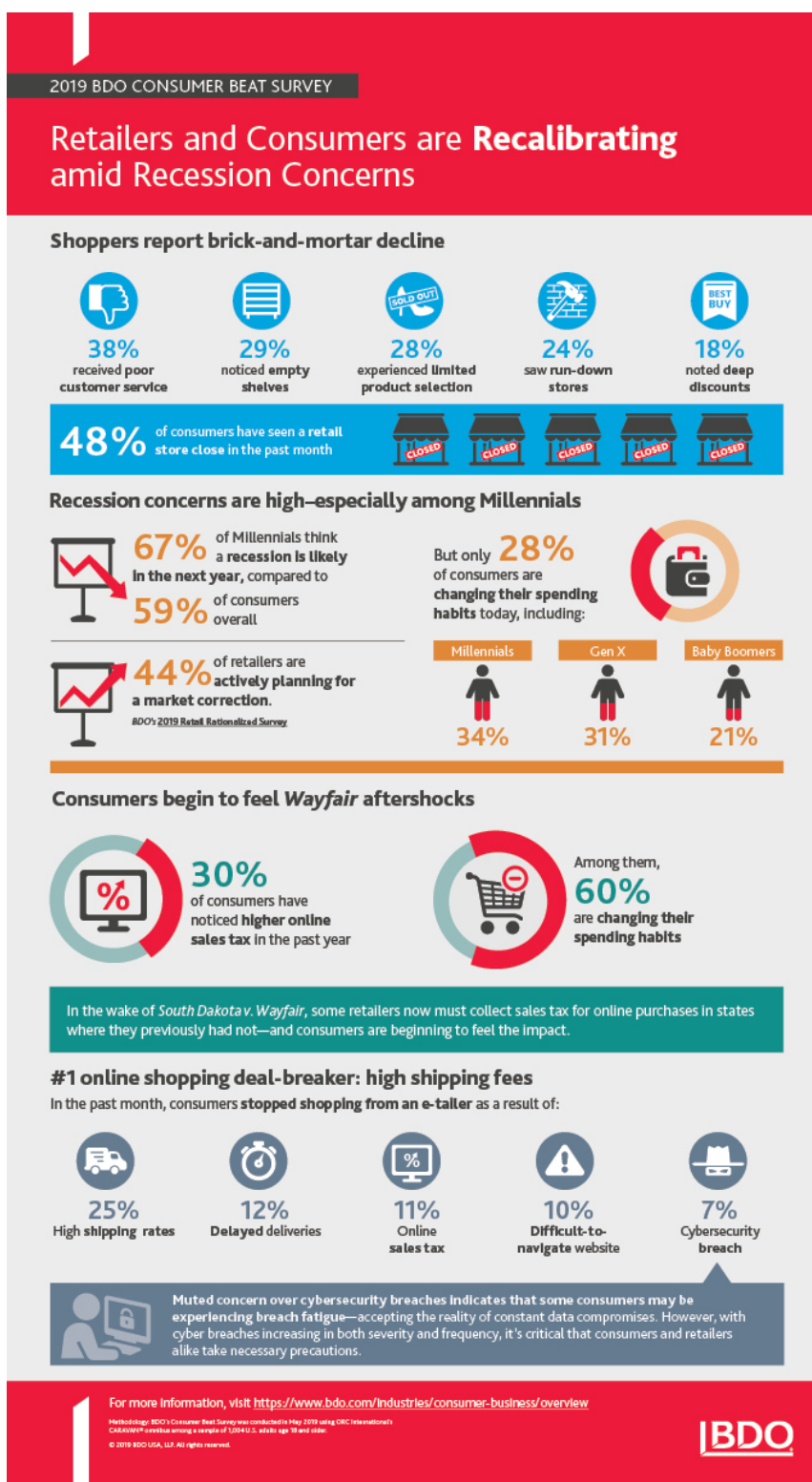
FIGURE I

3 UNITED NATIONS. Transforming our world: the 2030 Agenda for Sustainable Development, 2015. Available at <https://sustainabledevelopment.un.org/post2015/transformingourworld> Accessed on Ago 25, 2020.

4 UNITED NATIONS, Op. cit., 2015. Available at <https://sustainabledevelopment.un.org/post2015/transformingourworld> Accessed on Ago 25, 2020.

5 “Indicators are being developed to help in this work. Quality, accessible, up-to-date, and reliable disaggregated data will be needed to help measure progress and ensure that no one is left behind. This data is the key to decision-making. Data and information available in communication mechanisms should be used whenever possible.” Idem.

6 BDO USA, LLP is a United States member firm of BDO International, a global accounting network. The company is headquartered in Chicago. BDO USA LLP. Official Site. Available at <https://www.bdo.com/> Accessed on Ago. 29, 2020.



Source: <https://www.bdo.com/insights/industries/retail-consumer-products/infographic-2019-bdo-consumer-beat-survey>

The Brazilian government chose the methodology; numbers are obtained through research carried out by the Brazilian Institute for Consumer Protection - IBDEC -, which states that “(...) were extended to the world’s population, several planet Earths would be needed today to meet the demand for food

and products”⁷ and other NGO. These data are transformed into information by IPEA and presented in the Brazilian SDGs Report. It is transparent and used by the government, researchers, and companies, that is, by society.

2 BRAZILIAN GENERAL DATA PROTECTION LAW (LGPD)

Law No. 13,709/2018⁸ was enacted to “protect the fundamental rights of freedom and privacy and the free formation of the personality of each individual” (Article 1). Its scope is processing personal data, whether in physical or digital media, issued by an individual or legal entity governed by public or private law. This dataset encompasses a broad set of operations in manual or digital media.

2.1 DIFFERENCE BETWEEN DATA AND INFORMATION IN THE LAW

First, the concept of data will be theoretically analyzed, and then the information will be framed and characterized.

Turban et al. conceptualize data as a description of things, events, and activities that alone cannot come together and represent any meaning.⁹ Along the same lines, Davenport (1998) brings the understanding of the importance of data, emphasizing that it provides subsidies for their treatment, transmission, and use. And he adds that data are the raw material of information.¹⁰ Following this line of thought, for Le Coadic, data consist of a form of representation composed of coded information, which allows placing them on electronic processing.¹¹ This means that the data can be processed digitally and thus

7 The IDEC still states that the current production and consumption patterns threaten the planet to the exhaustion of its resources, affecting people’s quality of life. It is estimated that individuals have already consumed 50% (fifty percent) of more than the planet can replenish. IBDEC. Consumo Sustentável: o que fazer por nós e pelo planeta. 2018. Available at: <http://www.idec.org.br/uploads/publicacoes/publicacoes/folheto-consumo-sustentavel.pdf> Accessed on Set 05, 2020.

8 BRASIL. Lei nº 13.709, de 14 de agosto de 2018. Lei Geral de Proteção de Dados Pessoais (LGPD). (Redação dada pela Lei nº 13.853, de 2019). Available at http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709compilado.htm. Accessed on Aug 19, 2020.

9 TURBAN, E.; RANIER JR., R. K.; POTTER, R.E. Introdução a Sistemas de Informação: uma abordagem gerencial. Traducion by Daniel Vieira. Rio de Janeiro: Elsevier, 2003.

10 DAVENPORT, Thomas H. Working Knowledge: How Organizations Manage What They Know, Cambridge: Harvard Business Press, 1998.

11 Le Coadic brings an idea that makes it possible to clarify what a database is and to differentiate it from a database. The database is the expression used in computing to describe the management systems of these sets (files) of data and their relationships. Database, on the other hand, has a different meaning. It involves the sources of computerized information and the information products derived from these sources and offered to different audiences, including the public administration, to carry out measurements. LE COADIC, Yves-François. A ciência da informação. Brasília, DF: Briquet de Lemos/Livros, 1996.

increase its efficiency, particularly for carrying out measurements.¹²

Capurro and Hjørland, when deepening the epistemological studies on information and presenting a review of the concept of information, clarify that one must consider that information is cultural information for a given person. This newsletter depends on the background, interpretive needs, and skills of the communicator and receiver in handling the information. That is, what was informed by the communicator can be put into another view by the receiver.¹³

Belkim and Robertson, concerned with the ontology of information, understand information as capable of altering a structure and that its transfer only occurs effectively when communication is established.¹⁴

After clarifying the information, Capurro highlights the two essential characteristics for decoding or interpreting the data: (i) the need for contextualization to allow such interpretation; and (ii) the need for an interdisciplinary view of its concept.¹⁵ The characteristics are of paramount importance because, as Machlup and Mansfield explain, information connects individuals with different interpretations who transmit and receive messages in the context of possible actions and impacts.¹⁶

Buckland stands out for classifying information by observable phenomena, dividing it into three groups: (i) information as a process, in which it reflects the changes that occur through the act of informing; (ii) information as knowledge, related to the aspect of knowledge communicated; and (iii) information as a thing, referring to everything that can be seen as informative, whether objects, data, documents, among others, which can constitute the physical representation of information for understanding and manipulation.¹⁷

When studying the data in the context of consumer relations, it is necessary to recognize when the information is treated; economic value is attributed to them. For example, aware of the information, governments can develop

12 LE COADIC, Op. Cit., 1996.

13 CAPURRO, R; HJØRLAND, B. O conceito de informação. Perspectivas em Ciência da Informação, Belo Horizonte, v. 12, n. 1, p. 148-207, jan./abr. 2007.

14 BELKIN, Nicholas J.; ROBERTSON, Stephen E. Information Science and the phenomenon of information. Journal of the American Society of Information Science, July-August, 1976. p.197-204.

15 CAPURRO, R. Epistemologia e Ciência da Informação. In: Encontro Nacional de Pesquisa em Ciência da Informação - Enancib, 5., 2003, Belo Horizonte. Anais do Enancib, Belo Horizonte: ECI/UFMG, 2003.

16 MACHLUP, F.; MANSFIELD, U. (Ed.). The study of information: Interdisciplinary messages. New York, NY: Wiley, 1983.

17 Buckland, M. K. Information as a thing. In Journal of the American Society for Information Science, Volume 42, Issue 5, June 1991, Pages 351-360. DOI: [https://doi.org/10.1002/\(SICI\)1097-4571\(199106\)42:5<351::AI-D-ASI5>3.0.CO;2-3](https://doi.org/10.1002/(SICI)1097-4571(199106)42:5<351::AI-D-ASI5>3.0.CO;2-3)

public policies suited to the population's desires (populist governments can even use some data to generate empathy). Another example is companies can implement sales and create new markets, among other multiple actions that will generate profit for investors.¹⁸

2.2 THE SOCIOECONOMIC VALUE OF INFORMATION

Attributing an economic value to the information presupposes the condition before the exchange of data between the communicator and the receiver so that this can occur. Foucault clarifies that for a deal to have value, it is necessary that the thing exchanged represents an interest of the one who receives that becomes necessary that it exists already loaded with weight in the imagination of the other.¹⁹

In this sense, this informational asymmetry and information as an economic value cannot be seen apart from the vision of protecting personal data. According to Crespo and Santos, the most significant benefits that can be obtained from enacting a general data protection law are legal certainty and the balance of power between data subjects and those who use them.²⁰ This is due to the amount of helpful information that can be generated in favor of companies.

This implies that the economic value of the information will dictate how personal data will be protected. The value controls information creation and storage, processing, and transmission. Also, it causes a direct impact on contractual obligations within the scope of business activities, where there are consumer relations.

Understanding how the value of information arises, another relevant

18 The extraction of monetary value from the intense flow of personal information naturally allows (...) the information to assume great relevance, both as a legal or economic asset". DONEDA, Danilo. A proteção de dados pessoais nas relações de consumo: para além da informação creditícia. In: BRASIL. Escola Nacional de Defesa do Consumidor. Brasília: SDE/DPDC, 2010.

19 "(...) so that, in an exchange, one thing can represent another; they must exist already loaded with value; and yet value exists only within representation (actual or possible), that is, within exchange or interchangeability. Hence two simultaneous possibilities of reading: one analyzes the value in the very act of exchange, at the crossing point between the given and the received; another analyzes it before the exchange and as the first condition for it to take place. The first of these two readings corresponds to an analysis that places and encloses the entire essence of language within the proposition; the other is to an analysis that discovers this very essence of language on the side of primitive designations - a language of action or root." FOUCAULT, M. *As Palavras e as Coisas: uma arqueologia do saber humano*. 8. ed. São Paulo: Martins Fontes, 1999.

20 CRESPO, Marcelo Xavier de Freitas; SANTOS, Coriolano Aurélio de Almeida Camargo. Como será o futuro dos negócios com a vigência do Regulamento Geral de Proteção de Dados Europeu? In: PINHEIRO, Patrícia Peck (coord.). *Direito digital aplicado 3.0*. São Paulo: Revista dos Tribunais, 2018.

discussion is what is the value of each transmission or block of data. The mathematical equations for valuing input are as varied as possible. The dimension of interest in them is that it appears in any of them, and this element of the equation will make the value of the information greater or lesser.

3 BRAZILIAN ADMINISTRATION TREATMENT, SHARING, AND TRANSPARENCY ON BRAZILIAN GENERAL DATA PROTECTION LAW (LGPD)²¹

In Brazil, under the LGPD, the processing of personal data can be carried out by two processing agents, the Controller and the Operator. In addition, there is the Person in Charge appointed by the Controller to act as a communication channel between the Controller, the Operator, the data subjects, and the National Data Protection Authority (ANPD).

A fundamental topic addressed by the Law, data processing concerns any activity that uses personal data in the execution of its operation, such as collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, archiving, storing, eliminating, evaluating or controlling information, modifying, communicating, transferring, disseminating or extracting.

Before starting any processing of personal data, the agent must make sure that the purpose of the operation is clearly and explicitly recorded and the purposes specified and informed to the data subject. In the case of the public sector, the primary goal of the treatment is related to the execution of public policies duly provided for by law, regulations, or supported by contracts, agreements, or similar instruments.

Sharing within the public administration, within the scope of the execution of public policies, is provided for in the Law and does not require specific consent. However, the collecting body must transparently inform which data will be shared and with whom. On the other hand, the body that requests to receive the sharing needs to justify this access based on a specific and determining public policy, describing the reason for the access request and then use that will be made with the data. Information protected by secrecy remains safeguarded and subject to specific regulations and rules. These and

21 BRASIL. Lei nº 13.709, de 14 de agosto de 2018. Lei Geral de Proteção de Dados Pessoais (LGPD). (Redação dada pela Lei nº 13.853, de 2019). Available at http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709compilado.htm. Accessed on Aug 19, 2020.

other fundamental issues must be observed by the bodies and entities of the federal administration to ensure the compliance of the processing of personal data by the legal hypotheses and principles of the LGPD.

The Law establishes a legal framework of rights for the holders of personal data. These rights must be guaranteed throughout the existence of the processing of personal data carried out by the body or entity. For the exercise of the rights of the holders, the LGPD provides tools that deepen active and passive transparency obligations and create procedural means to mobilize the Public Administration.

4 THE IMPACT OF THE BRAZILIAN GENERAL PERSONAL DATA PROTECTION LAW (LGPD) ON THE MEASUREMENT OF SDG 12

The Brazilian government organized the methodology to measure SDO 12. Also, the government prepared the Guide to Good Practices for Implementation in the Federal Public Administration.

The document is organized by the different bodies that make up the Central Data Governance Committee and contains guidelines on the attributions and performance of the Controller, the Operator, and the Person in Charge, as well as the National Data Protection Authority (ANPD). It also deals with the fundamental rights of citizens who own the data, addresses hypotheses of data processing and its performance, indicates the life cycle of personal processing data, and presents good practices in information security.²²

There are some difficulties in implementing the Guide because the consumer is involved in an environment where many of his actions are subject to registration and subsequent use. The supplier's access to this data and information makes it capable of destabilizing the consumption relationship, characterizing a new vulnerability for the consumer and consolidating itself. Thus, it is a new modality of informational asymmetry.²³

Another issue is that today's consumer exists in an environment where many of their actions are technically subject to registration and subsequent use. The abundance of information that can be obtained about the consumer

22 BRASIL. Lei Geral de Proteção de Dados Pessoais Brasileira (LGPD). In Acesso à Informação do Ministério da Cidadania. Available at <https://www.gov.br/cidadania/pt-br/aceso-a-informacao/lgpd> Accessed on August 30, 2020.

23 DONEDA, Danilo. A proteção de dados pessoais nas relações de consumo: para além da informação creditícia. In. Escola Nacional de Defesa do Consumidor. Brasília: SDE/DPDC, 2010.

can characterize a new vulnerability of the consumer to those who hold personal data.²⁴

This equalization of the consumption relationship, through the protection of personal data, contributes to the use of information generated from the data in ensuring the standards of production and sustainable consumption, in the sense of maintaining the well-being of present and future generations in the consumer society. All consumers should be sustainable and know their rights and responsibilities. Have a look at the right and duties mainly listed below:

FIGURE II



Source: https://pt.slideshare.net/dobbsmi/becoming-a-responsible-consumer?next_slideshow=12153579

OUTCOMES AND FINDINGS

To answer the research core question, a proteção de dados e informações, pode influenciar na manutenção do desenvolvimento sustentável. Through the treatment of consumerist information, Brazilian General Law for Data

²⁴ “(...) the processing of personal data, lawful, loyal, and transparent, may be of interest to the consumer, as it reflects on a greater variety of options or the development of products and services based on their real needs. And it is precisely in this sense that, by the way, the Consumer Defense Code itself, in its art. 4, III, provides for the need for “(...) harmonization of the interests of the participants in consumer relations and compatibility of consumer protection with the need for economic and technological development (...).” DONEDA, Op. Cit., 2010.

Protection contributes to acculturate patterns of sustainable production and consumption. This is clearly emphasized in the LGPD, as it requires the public administration and companies to be transparent in their data and in their practices for obtaining them, in addition to signaling that they must have a methodology for data processing.

Therefore, the finding is the need for data and information to ensure responsible production and consumption standards to meet the objectives of the 2030 Agenda, which represents an equalization of the existing consumption relationship between producers and data subjects.

Furthermore, we have a suggestion: The public administration and the private sector must inform consumers of their purposes and seek to create a culture of control over the treatment and circulation of data and information, respecting responsible production and consumption patterns, which will benefit future generations.

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