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Summary

“Protection of data subject’s rights and freedoms in case of data transfer from the European Union to the People’s Republic of China”

This dissertation's subject is the protection of data subjects' rights and freedoms in transferring their data from a territory located in the European Union to the territory of the People's Republic of China (hereinafter: China).

Personal data transfers are part of the present times. Personal data is transferred to the territory of various countries, including China. The continuous flow of different types of information, including personal data, determines the possibility to perform almost any activity, especially in the information society products and services market. However, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (OJ EU. L. 2016, No. 119, p. 1, as amended, from now on GDPR) introduces restrictions for transfers of personal data to third countries. This is because of the need to protect the rights and freedoms of data subjects. In the case of China, despite the 2016-2021 law reform, protecting data subjects' rights and freedoms still raises reasonable doubts. Therefore, the admissibility of data transfers from a territory located in the European Union to the territory of China may be questioned.

By the main research question, supplemented by auxiliary questions, I seek how to duly protect GDPR-based data subjects' rights and freedoms in case of data transfer from a territory located in the European Union to China.

The dissertation consists of an introduction, three chapters and a conclusion.

I present the research subject, questions, and methodology in the introduction.

The first chapter discusses the criteria for assessing a third country's legal system. It is commonly accepted that the adequacy assessment is carried out using criteria stemming from the provisions of the GDPR, with non-legal factors being included. In order to determine which criteria for a third country's legal system assessment are used, in Chapter One, I study the assessment criteria used by the European Commission, including those used under Directive 95/46. Research material also provides the adequacy decisions concerning personal data transfer agreements between the European Union and the US.

In the second chapter, I analyse China's data protection-related laws that emerged during the 2016-2021 reform period. For that purpose, I use the reconstructed criteria for assessing a third country's legal system. I derive from the analysis results to assess the level of personal data protection provided by Chinese law.

The third chapter focuses on the issue of transfers of personal data from the European Union to China. In the first part of the chapter, I determine whether the safeguards referred to in Article 46 GDPR and the derogations indicated in Article 49 GDPR sufficiently protect the rights and freedoms of data subjects whose data might be transferred to China, considering the level of personal data protection in China and the practice of selected Chinese companies. The second part of the chapter is devoted to data transfer agreements between the European Union and a third country, modelled on agreements concluded with the USA. In this part of the chapter, I analyse the compatibility of such an agreement for transfers of personal data from the European Union to China.

In the conclusion, I answer the main research question and recapitulate the remarks from Chapters One to Three.