



UNRAVELING AUTOMATED DECISION-MAKING: SCHUFA'S IMPACT AND IMPLICATIONS

On December 7 2023, the Court of Justice of the European Union (CJEU) delivered its judgment in the Schufa case, involving Schufa AG, Germany's leading credit rating agency, holding data on nearly 70 million individuals.

Schufa provides credit scores that are relied upon by financial service providers, retailers, telecom companies, and utility firms. In a recent case, a German resident had their loan application rejected by a bank based on a credit score assigned by Schufa. The individual contested this decision, seeking information about Schufa's automated decision-making processes under Article 15(1)(h) GDPR, which grants the right of access to such information.

Schufa argued that it was not responsible for the decision itself, asserting its role was limited to producing an automated score, leaving the actual decision to the third-party bank.

However, the court disagreed with Schufa's stance. It held that the creation of the credit score is a relevant automated decision under Article 22 GDPR, challenging the belief that only the ultimate decision-maker, i.e. the bank, engages in automated decision-making.

The court rejected Schufa's argument; It held that the creation of the credit score itself constitutes a relevant automated decision under Article 22 of the GDPR. In its judgment, the court considered the score's "*determining role*" in the credit decision, adopting a broad interpretation of the term '*decision*.'



Companies employing algorithms for risk scores or similar outputs, such as identity verification and fraud detection, may be concerned about the potential impact of this judgment. Many businesses assume customers bear regulatory risks associated with decisions based on their outputs. However, careful consideration is necessary to distinguish business models from those in the Schufa case.

For example, companies should assess the extent to which customers rely on the provided output when making decisions. If the output is one of many factors considered, and especially if it holds moderate significance, exceptions to Article 22 GDPR (explicit consent or contractual necessity) should be explored.

Companies must further evaluate if the ultimate decision has a legal or comparatively significant effect. In cases where the decision's impact is limited, exceptions under Article 22 GDPR may apply.

Schufa judgment coincides with the conclusion of the trilogue process around the EU AI Act, making it especially relevant for businesses developing AI-enabled solutions in high-risk areas, like credit decisions. The ruling is poised to influence practices in the evolving landscape of automated decision-making within 2024, as this remains an uncharted area for the national and EU legislator.

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