Essays

# Artificial Intelligence and Credit Scoring: The European Court of Justice Takes Action

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ABSTRACT: Recently, the European Court of Justice ruled on the subject of credit scoring calculations with techniques based upon artificial intelligence, which constitute cases of great interest, because the judge finally turned his attention to companies such as Schufa and B&D. This kind of dispute, between evaluated parties and scoring companies, will be probably destined to grow over the next few years and will almost certainly lead to questioning the rights of individuals with reference to the breadth of the right to information on the logic of the algorithm involved to achieve the final result.

KEYWORDS: artificial intelligence; credit scoring; proper to information; explainability; algorithm

SUMMARY: 1. Some introductory considerations – 2. The procedural events – 3. The general question relating to interpreting the concept of 'decision' contained in Article 22 GDPR – 4. Further specifications regarding the right of access recognised to the personal data owner, in the case of an automated creditworthiness assessment procedure – 5. The impact of decisions on companies acting as Schufa and B&D – 6. The provisions contained in the AI Act – 7. A nod to the new Directive 2023/2225/EU on consumer credit agreements – 8. Some brief conclusions.

## 1. Some introductory considerations

Recently, the European Court of Justice had the opportunity to rule on the subject of credit scoring calculations with techniques that resort to the aid of artificial intelligence,[1] with two

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[1] As regards the Italian doctrine on the subject of credit scoring, see, P. GAGGERO, C.A. VALENZA, *Le moderne tecniche di* credit scoring *tra GDPR, disciplina di settore e* AI Act, in *Rivista di diritto bancario*, 2024, 825 ss.; M. RABITTI, *Credit scoring* via *machine learning e prestito responsabile*, in *Rivista di diritto bancario*, 2023, 175 ss.; L. AMMANNATI, G.L. GRECO, *Piattaforme digitali, algoritmi e* big data*: il caso del* credit scoring, in *Rivista trimestrale di diritto dell'economia*, 2021, 305; F. MATTASSOGLIO, *La valutazione 'innovativa' del merito creditizio del consumatore e le sfide per il regolatore***,** in *Diritto della banca e del mercato finanziario,* 2, 2020, 187-220; ID., *Innovazione tecnologica e valutazione del merito creditizio del consumatore,* Milano, 2018, 9 ff.

different rulings, which constitute cases of great interest, because the judge has finally turned his attention to companies such as Schufa and B&D.[2]

These entities base their business model on the exploitation of data, selling, to third parties, assessments about the creditworthiness of any potential user of services, on German and Austrian territory respectively, without, however, ever having been forced – at least so far – to comply with the provisions contained in Article 22 of the Regulation on the Protection of Personal Data (GDPR), i.e., the only ones that exist to date regarding these automated procedures. The assumption, behind which said companies have always taken refuge, was based on the fact that they were mere service providers, in a broader supply chain, which then did not see them in any way involved in the final decision, capable of affecting the legal situation of the user, that is, for example, in the provision of credit.

As is well known, the use of automated data processing systems has been the subject of specific attention by the regulator, only recently, with the now famous regulation on artificial intelligence (known as the AI Act) [3] – which brought credit scoring within the scope of those deemed high-risk activities, which require compliance with strengthened prescriptions.

We will return to this aspect in more detail later. Still, here it is appropriate to underline how, from now on, credit scoring companies, which use AI for their evaluation activity, will be subjected to a more rigorous regulatory framework, given that they will have to comply with both the provisions contained in the GDPR and those of the AI Act, given that the regulation on artificial intelligence itself is without prejudice to data protection legislation (recital 10 of the AI act).

Precisely as confirmation of this growing attention, reference must be made to the conclusions of the Advocate General, in the second decision, which, starting from the Schufa case, addressed the issue relating to the interpretation of the notion of "significant information on the logic used" in the context of an automated decision-making process, pursuant to art. 15, par. 1, letter (h) GDPR, with particular attention to the balance between the right of access to information, on the one hand, and the protection of rights, trade secrets included therein, on the other.

Both sentences confirm that, at the European level, a new line of jurisprudence is taking hold, destined, at least we hope, to have a profound impact on the sector.

In particular, from a legal point of view and according to a value we could define as general, the Court's rulings are progressively broadening and better delineating the scope of application of the art. 22 GDPR, far beyond the traditional notion of 'decision', and regardless of the scope in which that automated process is used.

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[2] European Court of Justice, judgment of 7 December 2023, Case C-634/21 and 27 February 2025, Case C-203/22. For comments, see F. CIRAOLO, *Le valutazioni automatizzate del merito creditizio nel quadro regolatorio europeo. Quale futuro per il credit scoring algoritmico?,* in *Rivista di Diritto bancario*, 2025, 105 ss.; A.G. GRASSO, *Decisioni automatizzate e merito creditizio: la Corte di giustizia sul credit-scoring*, in *Banca borsa e titoli di credito*, 77, 2024, 730 ss.; CIPL, *Decoding Responsibility in the Era of Automated Decisions: Understanding the Implications of the CJEU's SCHUFA Judgment*, October 2024, in https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_decoding_responsibility_automated_decision_making_oct24.pdf; A. AZA, *Scores as Decisions? Article 22 GDPR and the Judgment of the CJEU in SCHUFA Holding (Scoring) in the Labour Context*, in *Industrial Law Journal,* 53(4), 2024.

[3] Reg. UE/1689/2024 which establishes harmonized rules on artificial intelligence and modifies the regulations (CE) n. 300/2008, (UE) n. 167/2013, (UE) n. 168/2013, (UE) 2018/858, (UE) 2018/1139 and (UE) 2019/2144 and directives 2014/90/UE, (UE) 2016/797 and (UE) 2020/1828 (AI act).

Secondly, and from a more sectoral point of view, precisely thanks to a broader interpretation of the concept of decision, the European court appears to be oriented towards extending to companies such as Schufa and B&D, not only the provisions contained in Article 22, but also those relating to the disclosure requirements of Article. 15.
A significant evolution, given the weight that the decisions of these subjects have assumed in our societies.

## 2. The procedural events

Before moving on to consider the more strictly legal aspects, it is necessary to recall, albeit briefly, the events from which the appeals began: the first presented by a German citizen who had been denied credit by a financial intermediary, in the face of a negative credit scoring provided by Schufa; the second, however, initiated by an Austrian user who, due again to a negative evaluation conducted this time by B&D, had not been able to obtain the extension of a telephone contract, for a truly negligible value such as 10 euros per month.
In Germany, Schufa Holding AG (acronym for Schutzgemeinschaft für allgemeine Kreditsicherung) is a private company which basically has a monopoly concerning the assessment of the creditworthiness of persons entering German territory, thanks to over 9,000 contractual partners, which include telecommunications and electricity service providers, banks, savings banks, cooperative credit banks, and credit card companies.[4]
Based on the collected data, Schufa generates the so-called scoring of the subject considered, which constitutes an estimate of the subject's creditworthiness, expressed as a percentage, with 50% indicating a significant risk. In comparison, above 97.5% means a minimum risk.
That kind of score, among other things, not only interferes with access to credit, but also with the search for an apartment, with access to fundamental services such as electricity or telephone services, given that the conclusion of each of these contracts cannot ignore a verification of the position of the individual by Schufa.
In the case brought to the attention of the European Court, a German woman was thus denied a loan grant, by an intermediary, based on a negative opinion prepared by Schufa who, subsequently, refused not only to communicate to the interested party the precise data that had been placed as the basis of such an assessment, but also to correct any errors contained therein.
In fact, the company limited itself to providing a summary answer, invoking commercial secrecy to withhold more precise information about the calculation method. In addition to this statement, Schufa's defence was based mainly on its contention that it was not responsible for the infringement of the applicant's legal rights, given that it simply provided a report to the intermediary, who then took the final decision to deny credit.
Given such a position, the applicant requested the intervention of the German data protection authority, which quickly endorsed the agency's position, stating that the entity had not infringed the applicable rules. And this is why the matter then came before the European judge.

[4] https://www.schufa.de/en/ (last visited 29/09/2025).

In the second case, on the other hand, a citizen who was Austrian this time had been denied the extension of a contract by a mobile operator, which would have resulted in a monthly payment of only EUR 10, because of an assessment of financial unreliability, conducted in an automated manner by the company B&D, which was again a company specialising in the provision of such evaluations, like its German counterpart.

In this case, however, the national data protection authority accepted the petition submitted. It obliged the company to provide relevant information on the logic used in automated decision-making. However, it was then that B&D challenged the decision and, subsequently, having its appeal rejected, only partially enforced it.

The matter thus finally reached the European Court since, according to the appellant, B&D did not adequately fulfil its information obligations, producing untruthful information to such an extent that, based on the explanations offered, the applicant's creditworthiness would even have to be particularly high. Therefore, in apparent contradiction with the final evaluation judgment rendered.

Having said this, from a factual point of view, it is now possible to move on to considering the more strictly legal profiles of the events in question.

## 3. The general question relating to interpreting the concept of 'decision' contained in Article 22 GDPR

As can be seen from the facts just reported, the main question, which the European court had to address first of all, concerns Article 22 (1) of the GPR and, in particular, whether that rule must be interpreted as constituting an "automated decision-making process relating to natural person" within the meaning of that provision, automated calculation, by a company providing commercial information, of a probability rate based on personal data relating to a person and concerning the latter's ability to honor payment commitments in the future, if the stipulation, execution or termination of a contractual relationship with that person by a third party, to whom such probability rate is communicated, decisively depends on that probability rate.

In fact, only in the case of an automated decision-making process does the rule allow a whole series of requirements and protections to be triggered for the benefit of the interested party, first of all, his right not to be subjected to a decision based solely on automated processing, including so-called profiling, if it produces legal effects or similarly significantly affects his person.

As is known, there are three conditions that, cumulatively, must exist for the rule to be applicable: first, there must be a 'decision'; secondly, this decision must be based "solely on automated processing, including profiling"; finally, that decision must be able to produce "legal effects" or in any case intervene "similarly significantly" on the person concerned.

In light of these prescriptions, the question concerns the perimeter of the notion of 'decision' and the consequent need to adapt to a process that increasingly uses advanced technologies. In particular, from this point of view, it must be taken into account that the advent of AI systems has not only allowed the processing of enormous quantities of data at speeds unimaginable for human beings but also, and at the same time, increased the number of subjects potentially involved in the decision-making process, making it more complex.

It is no coincidence that the AI act itself recalls the existence of a real "value chain" [5] linked to AI, which often involves the co-presence of a plurality of subjects who may, from time to time, be engaged in it.
From this, one of the undoubtedly most challenging elements that this type of technology poses to the regulator is identifying the responsible agent for specific conduct.
In this new context, the final 'decision' can often intervene only upstream of a long and varied chain of events, each of which can constitute its fundamental prerequisite. Thinking then that only the last step, the one sometimes now devoid of any actual decision-making value – understood as a possible choice between a plurality of alternatives – is the one detrimental to the position of the interested parties, would be inappropriate.
Indeed, the matter under comment demonstrates that the actual infringement of the loan applicant's right/interest had already been realised well before the inevitable and subsequent 'formal' denial of the loan by the financial intermediary, namely, at the moment when the rating company rendered its judgment.
In light of this awareness, according to the court, it would henceforth be necessary to recognise a broad scope of the concept of 'decision' in Article 22 in question, also by virtue of the wording of recital 71, such that it could also include a mere "measure" capable of producing "legal effects concerning him" or of affecting "in a similar way significantly his person", which can also be, precisely, an automatic refusal of an online credit request or electronic hiring practices, if there has been no human intervention.
Consequently, the decision should also include the 'mere' result of calculating a person's solvency in the form of a probability rate relating to that person's ability to honour payment commitments in the future.
By virtue of this assumption, the judge's argument becomes much simpler. Clarified that even a judgment such as that expressed by Schufa can be understood as an automated decision, pursuant to Art. 22, there are no longer any obstacles to identifying the presence of the other two conditions required by the rule.
As regards the second condition, in fact, the Advocate General, in paragraph 33 of his Opinion, had also considered it common ground that an activity such as that of Schufa met the definition of "profiling" in Article 4 (4) of the GDPR.
Finally, with respect to the effects, according to the judge, the probability rate, given its weight in the context of the credit-granting decision, can significantly impact the interested party.
Consequently, given that the probability rate, established by a company providing commercial information and communicated to a bank, plays a decisive role in granting credit, the calculation of this rate must be classified in itself as a decision it produces in relation to a data subject "legal effects

[5] This concept is referred to Cons. 9 of the AI act, while Art. 16 provides that "any distributor, importer, deployer or other third party is considered a supplier of a high-risk AI system for the purposes of this Regulation and is subject to the obligations, according to the principle of liability along the AI value chain". For the first comments regarding the AI Act, see, C. CASONATO, B. MARCHETTI, *Prime osservazioni sulla proposta di regolamento dell'Unione Europea in materia di intelligenza artificiale*, in *BioLaw Journal*, 2021, 415 ff.; G. FINOCCHIARO, *La proposta di regolamento sull'intelligenza artificiale: il modello europeo basato sulla gestione del rischio*, in *Diritto dell'informatica*, 2022, 303 ff.; V. LEMMA, *Intelligenza artificiale e sistemi di controllo: quali prospettive regolamentari?*, in *Rivista trimestrale di diritto dell'economia*, 3, 2021, 319 ff.

concerning him or her or similarly significantly affecting him or her", within the meaning of Article 22 (1) of the GDPR.
This statement undoubtedly subjects companies that conduct scoring activities to the regulations on the protection of personal data, specifically those relating to automated processing.

## 4. Further specifications regarding the right of access recognised to the personal data owner, in the case of an automated creditworthiness assessment procedure

The clear statement of the position of the European court, regarding the obligation on scoring companies to comply with the principles set out in Article 22, could only open Pandora's box of appeals against similar parties and require further details, especially about the extent of the rights of individuals, subjected to such procedures around Europe.
In the case raised by the Austrian consumer, for example, the question concerned the interpretation of Article 15 and, more specifically, the extent of the right of access enshrined therein, especially in the case of balancing with Article 4 (6), which protects the commercial or business secrecy of the controller or third parties.
As the Advocate General himself specifies, starting precisely from the Schufa decision – which constitutes the logical prerequisite for the dispute – this case requests to integrate its content to the point of identifying how to resolve any conflict between interests involved and, again, establish what breadth those "significant information on the logic used" must take in the context of an automated decision-making process, pursuant to art. 15, par. 1, letter. (h), GDPR.
And it is in this regard, starting from point 40 of the decision, that the Court undertakes a complex reasoning aimed at reconstructing the meaning of the phrase "significant information on the logic involved", resorting – even – to the semantic linguistic apparatus of the different languages of the EU countries, in search of sufficiently precise concepts to adapt to the multifaceted reality of automated decision-making processes.
Here, it is useful, in particular, to recall the passage where the judge specifies that in the French version 'informations utilis' it would take on a connotation relating to 'functionality' which it would also retain in the Dutch 'nuttige', or in the Portuguese 'úteis'.
Romanian, however, would be more expressed in the sense of the relevance ('relevant') of the information to be provided. At the same time, in other translations their importance ('significant' in Spanish and 'istotne' in Polish) would be more accentuated. Finally, either the term 'aussagekräftig' used in German or the 'meaningful' in English would seem to refer more to the 'good intelligibility' and 'quality' of the information used for the explanation.
In point 42 of the decision, the "logic involved", again with reference to the automated decision-making process, according to the judge, should cover "a wide range of 'logics' of use of personal data and other data to obtain, with automated means, a certain result". In support of such a conclusion, some examples of translation into Czech and Polish are thus recalled, where the terms 'postupu' and 'zasady' could be translated with a meaning equivalent to 'procedure' and 'principles'.
These considerations enable the Court to state that, under the legislation thus interpreted, it would be possible to grant the data subject the right to "verify that personal data concerning him or her are

correct and processed lawfully" – that is, it would be, first of all, the data controller must provide the applicant with a "full" and "faithful" copy of the personal data that have been used as part of the automated procedure, to allow him to exercise his rights.

In other words, this would be the right to rectification (art. 16), to erasure of data ('right to be forgotten') (art. 17), to restrict processing (art. 18), as well as to object to processing (art. 21) and to take legal action (art. 79 and 82) which could never find any application in the absence of this initial passage of information.

Greater attention should be paid if the subject has been profiled.

But what should this information be like to be considered adequate in the case of an automated process?

To resolve the question, the court refers to the provisions of Article 12 (1) that "information intended for the person concerned must be concise, easily accessible and easy to understand, and formulated in simple and clear language", in other words, 'intelligible' for the addressee, unless it loses any usefulness. And this is where the issue becomes crucial.

In fact, in automated procedures, the data underlying the evaluation process can be pervasive and derived from other data (i.e., inferred or induced). Hence, the data subject must also be made aware 'of the context' in which this information was used.

This would, therefore, result in the recognition of a far broader right of access than the traditional application of Article 15 in conjunction with the previous Article 12, by virtue of the special features of the automated process.

Therefore, the "significant information on the logic involved" should relate to "any relevant information relating to the procedure and principles of use of personal data to obtain, by automated means, a certain result". In contrast, the obligation of transparency would require "that such information be provided in a concise, transparent, understandable and easily accessible form" (par. 50).

Consequently, the data subject should have "a genuine right to obtain explanations regarding the functioning of the mechanism underlying an automated decision-making process of which that data subject has been the subject and the result to which that decision has led".

The conclusion of this reasoning – or rather, the very emphasis given to the element of comprehensibility –, however, prompts the judge to exclude the algorithm from the list of information that must be disclosed by the data controller, by reason of its complexity and the consequent presumed incomprehensibility for the individual.

By way of reference, the data controller would therefore not be under an obligation to disclose information that presents a high level of complexity, such as to render it incomprehensible, without adequate technical expertise, thereby making it possible to exclude from communication the very algorithms used in the context of automated decision-making. In fact, according to the Court, "the simple communication of a complex mathematical formula, such as an algorithm, or the detailed description of all the stages of an automated decision-making process" can be considered to be in line with the fulfilment of said obligation. Otherwise, it would be necessary for the controller to describe "the procedure and principles actually applied", to allow the data subject to "understand which of his or her personal data have been used in what way in the automated decision-making process in question,

without the complexity of the operations to be carried out in the context of the automated decision-making process exempting the data controller from his duty of explanation" (par. 61).

It follows from this that, in the case of a credit scoring assessment, it could, for example, be deemed sufficient "to inform the data subject how a change at the level of the personal data taken into account would have led to a different result" (par. 62).

As regards the profile relating to the comparison of interests (both of third parties and relating to industrial secrecy), the Court refers to the supervisory authority or the competent court the task of concretely weighing the interests at stake and establishing the scope of the right of access, which could be recognised to any applicant.

In light of what has been stated so far, it is clear that these conclusions only partially address the appellant's interests, leaving the most delicate issue unresolved: the algorithm used to conduct the evaluation.

The conclusion reached by the European judge, however, should not be surprising, especially given the complexity now recognised in decision-making processes that use artificial intelligence.[6]

In particular, and without naturally being able to go into the details of the issue, it has now been highlighted how three different causes of opacity often characterise AI:

(a) The first of an institutional nature, namely, linked to the presence of know-how and secrets maintained by the software developers. A type of darkness that can certainly be addressed and resolved, even by a solution such as that put forward by the Court of Justice, i.e. by leaving the task of balancing interests to a judge or a third-party authority;

(b) The second is of a technical nature, linked to the complexity and difficulty for those who do not possess specific IT/mathematical skills. A type of opacity that determines, in fact, the potential distinction of the population between ignorant masses and an elite of technicians capable of understanding its functioning;[7]

(c) and, finally, the most dangerous one by far: an epistemic obscurity that becomes the real problem. In this case, reference is made to the complex operation of automated decision-making systems, which are increasingly characterised by the absence of fundamental epistemically relevant elements that would provide an understandable explanation in human terms.

According to this setting, consequently, the behavior of neural networks although it can be mathematically precise – thanks to the presence of a possible computational explanation – it could, at

[6] With regard this concept, see B.D. MITTELSTADT, P. ALLO, M. TADDEO, S. WATCHTER, L. FLORIDI, *The Ethics of Algorithms: Mapping the Debate*, in *Big Data & Society*, 3, 2016, 2; S. WACHTER, B.D. MITTELSTADT, L. FLORIDI, *Why a Right to Explanation of Automated Decision-making Does Not Exist in the General Data Protection Regulation*, in *International Data Privacy Law,* 2, 2017, 76-99, which focuses on the problem relating to the explicability of AI and, on the other hand, positions such as that of G. WHEELER, *Machine Epistemology and Big Data*, in L. MCINTYRE, A. ROSENBURG (edited by), *Routledge Companion to Philosophy of Social Science*, New York, 2016, and that of C. GLYMOUR, *The Automation of Discovery*, in *Daedalus*, 2004, who are instead enthusiastic about the potential of machine learning techniques, to the point of considering the need to reach an explanation now completely obsolete.

[7] In this regard, see Y.N. HARARI, *Nexus: A Brief History of Information Networks from the Stone Age to AI*, London, 2024.

the same time, continue to be "epistemically opaque" from the point of view of its ability to make the decision "intelligible" and therefore then "shareable" by the human being.[8]

For these reasons, it is clear how the possibility of reasonably interpreting the content of Article 15 is most uncertain, and more specifically, what meaning is to be attributed to that right to obtain "significant information on the logic involved" when artificial intelligence is used. This is why some authors have suggested – even before the GDPR came into force – that the provision should be interpreted as giving the individual a mere right to 'be informed', ex ante, of the existence of an automated procedure and the logic underlying the final decision.[9] However, it would have been too complex to demand an ex post explanation of how that specific and single final decision was reached.

An extensive problem, which is becoming increasingly evident and current.

## 5. The impact of decisions on companies acting as Schufa and B&D

One of the most interesting aspects of the acts under comment is undoubtedly that of referring to the use of artificial intelligence[10] by entities such as Schufa and B&D, which, although performing a fundamental function in the lives of citizens, have so far been deemed outside the scope of Articles 22, 15 and 12 of the GDPR.

Given the role these entities play, many are even convinced that they are public, when in reality, as anticipated, they are private.

As noted above, this type of company falls within the scope of the so-called credit rating agencies, which can be public, if managed by the central bank, or private.[11]

In Italy, for example, both categories are present. While public risk centres were initially established for macroeconomic reasons, private ones were created to acquire greater knowledge of their potential counterparties. In this second case, the data is exclusively collected by entities that sign specific contractual agreements with one another, which, as we have seen, now range across the most diverse sectors. In this regard, it is worth reiterating that the scores these companies assign affect access to credit and can influence the possibility of renting a house, obtaining a connection to domestic utilities, etc.

[8] S. Zipoli Caiani, *A cosa pensano le macchine? Efficienza e opacità nelle reti neurali artificiali*, in AA.VV., *Filosofia dell'intelligenza artificiale*, Bologna, 2024, 21 ff.

[9] Moreover, significant interpretative doubts had already concerned the provision contained in the 1995 directive. On this topic, see D. Korff, *New Challenges to Data Protection Study – Working Paper No. 2: Data Protection Laws in the EU: The Difficulties in Meeting the Challenges Posed by Global Social and Technical Developments*, January 15, 2010, European Commission DG Justice, Freedom and Security Report, *online*.

[10] K. Langenbucher, *Consumer Credit in The Age of AI – Beyond Anti-Discrimination Law*, *SAFE Working Paper*, 2022, 369; C. O'neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy*, New York, 2016.

[11] Regarding this point, see L. Buonanno, *Un modello giuridico europeo di 'credit reporting industry'*, in *Banca borsa e titoli di credito*, 2022, 582 ff.; C. Venditti, *Il sistema binario italiano per la centralizzazione delle informazioni sui rischi creditizi*, in *Diritto del mercato assicurativo e finanziario*, 2021, 156 ff.; A. Sciarrone Alibrandi, F. Mattassoglio, *Le centrali dei rischi: problemi e prospettive*, in *Diritto della banca e del mercato finanziario*, 2017, 764-785.

From this point of view, having established the obligation to apply the relevant articles of the GDPR constitutes an essential step towards companies destined to have an increasingly relevant role in consumers' lives.

In Italy, these private credit rating agencies (so-called Società di Informazione Creditizia o SIC) are subject to a code of conduct on the subject ('Code of Conduct') (adopted by the Resolution of the Privacy Guarantor of 6 October 2022), whose Art. 10, which precisely with reference to automated procedures, states that "In cases where personal data contained in a SIC are also processed by automated scoring treatments or decision-making processes, the manager and the participants, it being understood that the managers do not take under the terms of the Regulation any decision that may affect the rights and freedoms of data subjects".

In this case, therefore, it is the same code that has consistently ruled out that the activity of managers could be brought within the scope of the notion of "decision", referred to in Article 22 of the GDPR.

Consequently, the ruling of the Court of Justice will certainly produce significant effects on the sector, especially since, in the meantime, the AI Act has also come into force, which is destined to impose much more penetrating obligations on information system managers than what has been foreseen so far.

## 6. The provisions contained in the AI Act

As already anticipated, the AI Act devotes particular attention to the assessment of the creditworthiness of consumers (natural persons), given that said judgments "determine the access of such persons to financial resources or to essential services such as housing, electricity and telecommunications services" (recital 58).[12] Due to this role, these automated systems could therefore lead "to discrimination between people or groups and can perpetuate historical models of discrimination, such as that based on racial or ethnic origin, gender, disabilities, age or sexual orientation, or can give rise to new forms of discriminatory impacts".

For this reason, the regulation brings this type of assessment back into the context of AI use cases considered high risk.[13]

Note that, in the opinion of the writer, it would be more absurd than ever to believe – as someone has done[14] – that the regulation should be interpreted restrictively, excluding from its scope precisely cases of credit scoring that are purely aimed at obtaining financial resources – think of the hypothesis of a mortgage – to refer instead exclusively to assessments connected with obtaining good and services deemed essential, emphasising the differences in terminology between recital 58 and the Annex below.

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[12] L. Rocco Di Torrepadula, *L'uso del credit scoring algoritmico nella valutazione del merito creditizio*, in *Banca borsa e titoli di credito*, 78, 2025, 213; M. Rabitti, *Credit scoring* via *machine learning*, cit., 175 ff.

[13] In this respect, see the list in point 5 of Annex III dedicated to access to essential private services and essential public services and services and their use, where it provides that "IA systems intended to be used to assess the creditworthiness of natural persons or to establish their creditworthiness, with the exception of IA systems used for the purpose of detecting financial fraud". For a deeper analysis, see D. Di Sabato, G. Alfano, *L'impiego dell'IA per condizionare e valutare le persone tra limitazioni e divieti: qualche considerazione critica sulla proposta di Regolamento sull'IA elaborata dalla Commissione europea*, in *Rivista di diritto dell'impresa,* 2022, 281 ff.

[14] G. Spindler, *Algorithms, credit scoring, and the new proposals of the EU for an AI Act and on a Consumer Credit Directive*, cit., 243, regarding the interpretative doubts of credit scoring systems falling within the scope of high-risk systems, due to a mismatch between the provisions contained in recital 58 and Annex III.

Not only is it clear that financial resources are a fundamental requirement for an individual to access essential goods and services, such as housing, but credit scoring linked to financing requests is one of the thorniest sectors, in which individuals certainly deserve protection. It can therefore be defined as delicate and high-risk ex se.

A similar interpretation is also confirmed in the new directive on consumer credit 2023/2225, shown below.

Here, it is certainly not possible to analyse all the provisions in the AI Act in detail. Still, it is considered appropriate to focus on two aspects that highlight deep connections with the principles affirmed by the European Court of Justice.

First, European regulation pays much attention to considering the multiplicity of procedural phases that tools such as artificial intelligence may involve. In recital 53, for example, it introduces the distinction between cases where the use of AI is capable of materially influencing the decision-making process – that is, where the algorithmic component takes on a decisive role for the decision, consequently influencing interests substantially –, and hypotheses where no such impact can be recognised, and the final decision can be considered separately.

With reference to this second category, the first hypothesis mentioned is that in which AI is used to carry out a task defined as "restricted procedural", i.e., a mere transformation of unstructured data into structured data, as in the case in which it is used exclusively to catalogue a series of documents. In this case, the activity would not involve significant risks, given its limited nature.

The second hypothesis concerns, however, those tasks aimed at improving the results of "a previously completed human activity", in which AI would therefore only allow the addition of a further level, as in applications that enable improving the language used in writing.

Thirdly, the hypothesis of decision models or deviations from previous decision models is recalled: when AI is used after a human decision phase, to verify its validity ex post. Finally, reference is made to the use of AI in the context of a mere preparatory phase of a human decision, as in file management, indexing, research, textual and voice processing, linking data to other data sources, or systems used for translation.

Therefore, the new regulation seeks to provide greater clarity on complex decision-making processes and to distinguish the phases in which automation can intervene, thereby clarifying when the real decision-making moment should be placed, rather than in merely preparatory or subsequent phases.

Secondly, the AI act confirms the tendency to broaden the scope of potential recipients of obligations, taking into consideration a very varied audience of subjects involved in the process, which can lead to the adoption of the final decision, according to an approach perfectly in line with the evolution of the Court of Justice, which has just been taken into account.

Precisely for this reason, for example, Article 3 of the regulation within the scope of its definitions recalls various figures who must be considered involved in the process and therefore potentially subject to the obligations imposed, such as: suppliers, deployers, authorized representatives, importers, distributors, operators, each of whom could be called into question if he intervenes, in some way, on the artificial intelligence system.

These forecasts demonstrate how the regulation intends to consider all entities involved in using AI, so that complexity does not translate into irresponsibility.

From this perspective, apparent similarities can be seen between the jurisprudential and regulatory paths.[15]

## 7. A nod to the new Directive 2023/2225/EU on consumer credit agreements

Finally, the Directive 2023/2225/EU on consumer credit agreements (Consumer Credit Directive, CCD II), which repeals the previous Directive 2008/48/EC, and must be implemented by November 2025, introduces other essential provisions.[16]

In particular, for our purposes, the wording of Article 18 (3), which requires not only that "The assessment of creditworthiness be carried out based on relevant and accurate information on the income and expenditure of the consumer and on other information on the economic and financial situation, which is necessary and proportionate in relation to its nature, duration, is especially relevant to the value and risks of credit for the consumer", but goes so far as to exemplify some types of data that can be used such as "evidence of income or other sources of reimbursement, information on financial assets and liabilities or information on other commitments financial".[17]

Whereas the provision introduces an express prohibition on the use of sensitive data as referred to in Article 9 (1) of GDPR 2016/679 and requires the "relevance" of internal or external sources from which information may be collected by specifying that "Social networks are not considered to be an external source for this Directive".[18]

With specific reference to an assessment carried out by automated data processing, paragraph 8, of Article 18 then assures, to the consumer applying for the loan, the right to be able to demand and obtain human intervention, which takes the form of the possibility of arriving at a clear and comprehensible explanation of the procedure used for the assessment, including its logic and any risks; the right to express one's opinion and, finally, to request a review of the evaluation and decision relating to the credit application. In the event of a negative outcome, the right to a human review and to contest the decision is reiterated.

Therefore, once again, a series of guarantees and rights for subjects subjected to an automated evaluation procedure which, if on the one hand confirm the rulings of the judge and the advocate general in question, on the other end up returning once again to the problem relating to the interpretation of that right to obtain a clear and understandable explanation already mentioned.

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[15] Regarding the relationship between GDPR and AI Act, see P. FALLETTA, A. MARSANO, *Intelligenza artificiale e protezione dei dati personali: il rapporto tra Regolamento europeo sull'intelligenza artificiale e GDPR*, in *Rivista italiana di informatica e diritto*, 2024, 119 ff.

[16] M. ORTINO, *La terza direttiva sul credito ai consumatori: distinzioni e complementarità nella tutela di interessi pubblici e privati*, in *Rivista della regolazione del mercato*, 2, 2024, 569.

[17] G. FALCONE, *Prime riflessioni sulla Direttiva CCD II: le informazioni e la valutazione del merito creditizio*, in *Rivista della banca e del mercato finanziario,* 4, 2024, 613; F. TRAPANI, *La nuova direttiva 2023/2225/UE sul credito al consumo: note in tema di educazione finanziaria, merito di credito e servizi di consulenza sul debito*, in *Le Nuove Leggi Civili Commentate,* 3, 2024, 754; P. GAGGERO (a cura di), *Primo commento sui criteri ordinatori della Direttiva UE n. 2023/2225 relativa ai contratti*, in *Rivista Trimestrale di Diritto dell'Economia*, suppl. al n. 4, 2024.

[18] N.M.F. FARAONE, *Spunti ricostruttivi in materia di profilazione e valutazione del merito creditizio nella nuova strategia europea dei dati*, in *Analisi giuridica dell'economia*, 44, 2025, 267 ff.

## 8. Some brief conclusions

Trying at this point to pull the strings of our reflections, we can note how the European legal system, thanks to the interpretative activity of the Court of Justice and the intervention of the regulator, has now decided to focus its attention on the activity conducted through the use of artificial intelligence, including the case in which companies operating in the field of credit scoring are involved, putting an end to a season of substantial regulatory uncertainty.

Indeed, probably, the events referred to here will constitute only the first signs of a dispute, between evaluated subjects and scoring companies, which will be destined to grow over the next few months and years and which will almost certainly lead to questioning and better examining the question of the rights of individuals, especially with reference to the breadth of the right to information on the logic of the algorithm that is used to reach the final judgement.

In the opinion of the writer, this will, in fact, be the front on which the most challenging game will be fought, given that the algorithm is the heart, the very essence of an automated procedure. The only one that justifies and determines the final result based on the specific set of data it was fed.

It is, therefore, by its nature complex and destined to become increasingly obscure as automated processes evolve and gain influence.

For this, it will probably be necessary to be aware of what has already been labelled as the conjecture on Floridi's "certainty-scope",[19] in other words, the attempt to mathematically prove the existence of a fundamental trade-off between the epistemic certainty relating to the result of a process that uses an AI system and the breadth of its operation and purpose. According to this hypothesis, only in systems that operate in restricted contexts is it possible to hypothesise complete epistemological certainty as their breadth increases; however, their inextricable unknowability becomes increasingly pronounced.

Conjecture on which, certainly in the coming years, the judge and jurists more generally will also have to begin to reflect.

[19] L. FLORIDI, *A Conjecture on a Fundamental Trade-Off between Certainty and Scope in Symbolic and Generative AI, in Philosophy & Technology,* 38, 2025, 93.