

13 March 2026

ACCIS INPUT ON THE DIGITAL OMNIBUS

POSITION PAPER ON THE GDPR



TOWARDS A HARMONISED FRAMEWORK ON AUTOMATED DECISIONS

ACCIS broadly supports the Digital Omnibus proposal as a meaningful step towards reducing compliance costs, unlocking the potential of data-driven markets, and strengthening the EU's competitiveness — objectives our members embody through their role in enabling responsible lending across the internal market.

We are particularly supportive of the proposed amendments to Article 22 GDPR, which rightly move from a prohibition-with-exceptions architecture towards a clearer framework of permission under defined conditions — a reform that acknowledges the legitimate role of automated processing in modern digital economies.

However, for the specific and socially valuable function our members perform — providing objective credit scores as independent third parties to support lenders in their ultimate decisions on whether to extend credit — significant legal uncertainty persists as a direct consequence of the European Court of Justice's (ECJ) ruling in Case C-634/21 (SCHUFA), which the proposed amendments do not yet fully resolve.

The need for legal certainty. We urge the co-legislators to prioritise legal certainty, ensuring the digital acquis drives innovation rather than compounds compliance complexity, especially in the area of Automated Decision Making, Article 22:

The Commission proposal lays down the cases where decisions *solely* based on automated processing are permitted. This amendment maintains, in essence, the three exceptions established in the original wording of the Article 22(2), namely: a) the necessity to enter into/ to perform a contract; b) an *ad hoc* authorization by EU law or Member States law; c) the consent of the data subjects.

We believe that the Digital Omnibus should further clarify the perimeter of the automated individual decision-making processes, in light of the aforementioned case (C-634/21 *Schufa* case)¹, specifically addressing the cases where **third parties** are involved during multi-step processing and decision-making.

As evidenced in Arnal (2026)², by extending Article 22(1) to cover intermediated outputs in a multi-stage assessment chain, the Court has blurred the distinction between preparatory data processing and actual decision-making. As such, there are **two main scenarios for third parties.**

A) A so-called “Hybrid” automated decision-making. Taking into account the ECJ jurisprudence, it should be borne in mind that, in order to establish the applicability of Article 22, three conditions should be met:

- i) a decision;
- ii) a decision based solely on automated processing, including profiling; and,

¹ Case C-634/21, *OQ v Land Hessen (SCHUFA Holding – Scoring)*, [2024] OJ C/2024/913

² Arnal, J. Unfit for purpose? The legal maze of credit scoring under EU law. *J Bank Regul* **27**, 14 (2026). <https://doi.org/10.1057/s41261-026-00311-7>

- iii) it must produce legal effects concerning the data subjects or similarly significantly affects him/her.

It could be inferred that the provision is not applicable to hybrid decision-making processing, where the three cumulative conditions are not met, **as not constituting solely automated processing, thus are out of the scope of Article 22.**

B) Automated individual decision-making In the aforementioned Case C-634/21, the ECJ opted for a broader interpretation of the concept of “decision”, which is not defined in the GDPR.³ Specifically, the Court assesses the conditions in the main proceedings, based on the facts available in the specific case, considering that an intermediary processing by a third party constitutes an automated individual decision-making where the data controller entitled to take the final decision draws strongly on it to establish, implement or terminate a contractual relationship with the data subject.⁴ As acknowledged by the Court, the classification of the preparatory act should be considered a decision, in the meaning of Article 22, where appropriate, to avoid a legal lacuna for fundamental rights protections of data subjects.⁵ However, even in the Digital Omnibus this gap still remains open for third parties involved in analogous circumstances, limiting the legal certainty for their activities.

Therefore, ACCIS recommends a proposal (*see Drafting Proposals below*) for a **harmonised European framework** in circumstances analogous to those addressed in the Schufa ruling. The adoption of such an EU wide solution would ensure a consistent and adequate level of protection for data subjects throughout the Union, while simultaneously providing economic operators with enhanced legal certainty and operational conditions predictability.

The same regime would be applicable to automated decision processing, independent of the fact that a third-party is involved, ensuring the same of level of safeguarding of the data subject’s rights and freedoms, according to art. 22 (3).

A uniform approach would prevent regulatory fragmentation among Member States, thereby safeguarding the integrity of the internal market and avoiding divergent national interpretations that could impede the free flow of data-driven services. A coherent EU solution would thus promote cross border innovation, strengthen competitiveness and innovation and support the overall objectives of a well-functioning Digital Single Market.⁶

³ Judgment C-634/21 Schufa case, para 44.

⁴ Judgement C-634/21 Schufa case, para 73.

⁵ Judgement C- 634/21 Schufa case, para. 61.

⁶ The future of European competitiveness Part B | In-depth analysis and recommendations, Draghi Report, p. 317

Drafting proposals.

Scenario A. Hybrid automated individual decision making- Third party.

(New) Recital 38- Digital Omnibus	ACCIS amended proposal
<p>Article 22 of Regulation (EU) 2016/679 provides for rules governing the processing of personal data when the data controller makes decisions which have legal effects or similarly significant effects on the data subject, based solely on automated processing. In order to provide greater legal certainty, it should be clarified that decisions based solely on automated processing are allowed when specific conditions are met, as set out in Regulation (EU) 2016/679. It should also be clarified that when assessing whether a decision is necessary for entering into, or performance of, a contract between the data subject and a data controller, as set out in Article 22(2)(a) of Regulation (EU) 2016/679, it should not be required that the decision could be taken only by solely automated processing. This means that the fact that the decision could also be taken by a human does not prevent the controller from taking the decision by solely automated processing. When several equally effective automated processing solutions exist, the controller should use the less intrusive one.</p>	<p>Article 22 of Regulation (EU) 2016/679 provides for rules governing the processing of personal data when the data controller makes decisions which have legal effects or similarly significant effects on the data subject, based solely on automated processing. In order to provide greater legal certainty, it should be clarified that decisions based solely on automated processing are allowed when specific conditions are met, as set out in Regulation (EU) 2016/679. <i>It should be clarified that in cases when a substantial human involvement is present, the provision is not applicable. Similarly, in cases where automated decision making does not significantly affect data subjects, such as in the identification processes, as well as in cases of preliminary controls, such as those related to the payment methods, do not fall under the scope of the provision.</i></p> <p>It should also be clarified that when assessing whether a decision is necessary for entering into, or performance of, a contract between the data subject and a data controller, as set out in Article 22(2)(a) of Regulation (EU) 2016/679, <i>regardless of whether the data processing is performed by the data controller or by a third party in a contractual relationship with the data controller</i>, it should not be required that the decision could be taken only by solely automated processing. This means that the fact that the decision could also be taken by a human does not prevent the controller from taking the decision</p>

	by solely automated processing When several equally effective automated processing solutions exist, the controller should use the less intrusive one.
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Scenario B. Automated individual decision making- Third party.

Original wording- Art. 22 GDPR	Proposed change in Digital Omnibus	Amendment proposal
<p>1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.</p> <p>2. Paragraph 1 shall not apply if the decision:</p> <p>(a) is necessary for entering into, or performance of, a contract between the data subject and a data controller,</p> <p>(b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</p> <p>(c) is based on the data subject's explicit consent.</p>	<p>1.A decision which produces legal effects for a data subject or similarly significantly affects him or her may be based solely on automated processing, including profiling, only where that decision:</p> <p>(a) is necessary for entering into, or performance of, a contract between the data subject and a data controller, regardless of whether the decision could be taken otherwise than by solely automated means;</p> <p>(b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</p> <p>(c) is based on the data subject's explicit consent.</p>	<p>1.A decision which produces legal effects for a data subject or similarly significantly affects him or her may be based solely on automated processing, including profiling, only where that decision:</p> <p>(a) is necessary for entering into, or performance of, a contract between the data subject and a data controller, <i>either when the data processing is performed directly by data controller or by a third party in a contractual relationship with the data controller</i>, regardless of whether the decision could be taken otherwise than by solely automated means;</p> <p>(b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</p> <p>(c) is based on the data subject's explicit consent.</p>



ACCIS

ACCIS represents the largest group of credit reference agencies in the world. ACCIS brings together 40 members across 28 European countries and 11 associate and affiliate members from all other continents.

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