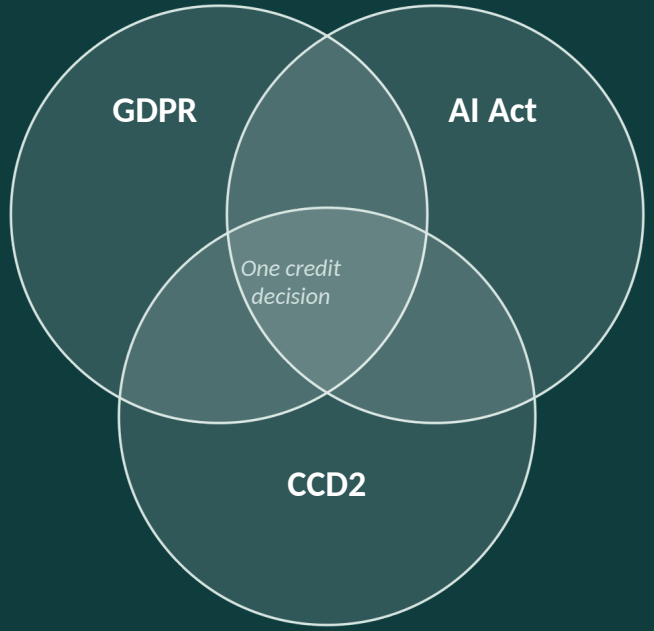
# Unfit for purpose? The legal maze of credit scoring under EU law




Article 22 GDPR, the AI Act and CCD2, one year into the Digital Omnibus

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ACCIS Policy Discussion, Brussels, 19 November 2026

Based on Arnal, J. (2026), Journal of Banking Regulation 27:14

# Outline


1 **The maze** — One credit score, three rulebooks, three unresolved problems

2 **Article 22 GDPR** — The legal basis problem and what the Digital Omnibus changes

3 **AI Act** — Credit scoring as high-risk AI: new dates, same threshold question

4 **Overlaps** — Human intervention under the GDPR, the AI Act and CCD2

5 **What to get right** — Three recommendations and where they stand

# Why a maze: one credit score, three rulebooks, three sets of obligations, three unresolved problems

| | What it says | What it requires | Where the problem lies |
|---|---|---|---|
| **GDPR**<br>Article 22 | Prohibits decisions based solely on automated processing. After the ECJ's ruling, the bureau's score counts as a decision if the lender draws strongly on it | An exception: a contract, explicit consent, or an EU or national law that authorises it. Plus human intervention and the right to contest | No EU legal basis. Contract and consent are not fit for purpose, and most Member States have no specific law (Germany now has one). The Digital Omnibus helps lenders, not credit bureaus |
| **AI Act**<br>Annex III, point 5(b) | Classifies as high-risk the AI systems that assess the creditworthiness or establish the credit score of natural persons | Risk management, data governance, technical documentation, human oversight and a conformity assessment before use | Is a logistic regression model AI? The Commission's 2025 guidelines leave it out if it does not go beyond 'basic data processing', a notion they do not define |
| **Financial rules**<br>CCD2, MCD, CRR, DORA, EBA Guidelines | Already oblige lenders to assess creditworthiness and to govern the models they use for it | A thorough assessment, validated and well-governed models and, under CCD2, explanation and human review | Duplication with the AI Act. It accepts banking rules for quality management and post-market monitoring, but not for human oversight, data governance or cybersecurity: the same model must comply twice |

Source: Arnal (2026); CJEU, C-634/21 SCHUFA Holding; Regulation (EU) 2024/1689; Directive (EU) 2023/2225; EBA (2025).

# For a credit bureau, only a law can authorise the score, and today that law is national

| | Lender | Credit bureau |
|---|---|---|
| **Contract**<br>Article 22(2)(a) | **Uncertain.** It has a contract with the borrower, but automation must be indispensable, not merely efficient | **Not available.** It has no contract with the consumer |
| **Explicit consent**<br>Article 22(2)(c) | **Not viable.** Rarely freely given when access to credit depends on it | **Not viable.** No direct relationship with the consumer, and the same problem |
| **EU or national law**<br>Article 22(2)(b) | **Viable.** Where a law authorises automated assessments | **The only route.** Germany has its own law from 20 November 2026; most Member States do not |

**Proposal in the paper:** a harmonised legal basis in CCD2 and the Mortgage Credit Directive under Article 22(2)(b), rather than reopening the GDPR

Source: Arnal (2026); Regulation (EU) 2016/679; Bundesgesetzblatt 2026 I Nr. 139.

# The Digital Omnibus eases the contract exception for lenders, but leaves credit bureaus where they were

## Today
Article 22(2)(a) as interpreted

**The contract exception applies only if the decision could not be taken without automation**

For the lender

Hard to rely on: a loan officer could take the decision

## Commission proposal
19 November 2025

**The contract exception applies even if a human could take the decision**

For the lender

Could rely on it for automated credit decisions

## Council and Parliament rapporteurs
Mandate of 21 October 2026; draft report of 22 June 2026

**The change survives, but weaker: the Council moves it to a recital and adds a 'least intrusive' test**

For the lender

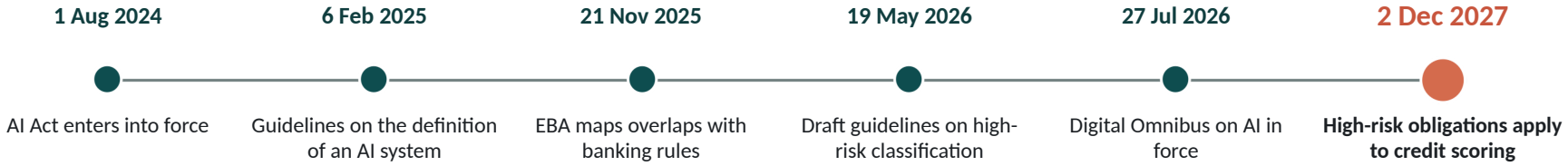
Helped, with less legal certainty. Parliament has not voted yet

**For the credit bureau:** no text helps. It has no contract with the consumer, so the score still needs a law that authorises it

**Next steps:** committee vote in Parliament envisaged for early 2027; negotiations with the Council not expected before March 2027

Source: COM(2025) 837; Council document 14756/26; ITRE-LIBE draft report PE786.818; Agence Europe.

# The AI Act deadline has moved to December 2027, but the threshold question remains open




*was 2 August 2026*

## What the Commission's draft guidelines of May 2026 say

- High-risk covers two uses: creditworthiness assessments and credit scoring
- Out of scope: models used only to calculate a bank's capital requirements (IRB), unless they also score individuals
- Out of scope: systems whose main purpose is to detect financial fraud

## Still open

- When does a logistic regression scorecard go beyond 'basic data processing' and become an AI system?
- Final guidelines expected by the end of 2026; no new EBA guidelines planned for now

Source: Regulation (EU) 2024/1689 as amended by Regulation (EU) 2026/1744; Commission guidelines (2025) and draft guidelines (2026); EBA (2025).

# Human intervention is regulated three times for the same credit decision

## GDPR Article 22(3)

### A right of the consumer, after the decision

A person reviews a fully automated decision, and the consumer can contest it

**Supervised by**

Data protection authorities

**In force since 2018**

## AI Act Article 14

### A design requirement, before the system is used

The scoring system must be built so that a person can oversee it

**Supervised by**

AI market surveillance authorities

**Applies from 2 December 2027**

## CCD2 Article 18(8)

### A right of the consumer against the lender

The lender explains the assessment and a person reviews it, whenever automated processing is involved

**Supervised by**

Consumer credit authorities

**Applies from 20 November 2026**

Source: Arnal (2026); Regulation (EU) 2016/679; Regulation (EU) 2024/1689 as amended by Regulation (EU) 2026/1744; Directive (EU) 2023/2225.

# Three things to get right, and where they stand in November 2026

## 1 A harmonised legal basis

Authorise automated creditworthiness assessments in CCD2 and the Mortgage Credit Directive, with the safeguards of Article 22(2)(b) and 22(3) GDPR

**Open**

Not on the table. The Omnibus works on the contract route and Germany has legislated alone

## 2 Guidance on what counts as AI

Supervisors confirm that static, interpretable models are unlikely to be high-risk AI; Commission, AI Office and EDPB issue joint guidance

**Partial**

Draft high-risk guidelines published; joint GDPR and AI Act guidelines still awaited

## 3 Coordinated supervision

Structured cooperation between data protection, AI and financial authorities, with a joint task force for credit

**Open**

Enforcement remains split between three sets of authorities

Source: Arnal (2026), 'Unfit for purpose? The legal maze of credit scoring under EU law', Journal of Banking Regulation 27:14.