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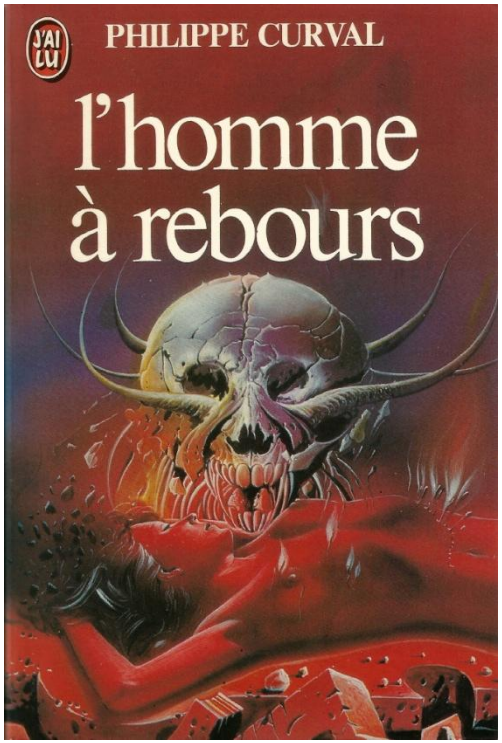
Article 22 GDPR: It's time to make a decision

IAPP European Privacy KnowledgeNet 2026

October 12, 2026

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Science Fiction Literature of the 1970s in France



L'Homme à rebours (1974)

Philippe Curval envisions a world in which technological systems and paranoid mechanisms of control shape social life.

Curval placed a strong emphasis on the psychological dimension: what happens to the individual when machines take over the total management of everyday life?

Source: https://www.noosfere.org/livres/niourf.asp?numlivre=813812008

French Data Processing Law 1978

ACT 78-17 of 6 January 1978
on Data Processing, Data Files and Individual Liberties

Section 2:

„No judicial decision involving an appraisal of human conduct may be based on any automatic processing of data which describes the profile or personality of the person concerned. “

Source: https://www.ssi.ens.fr/textes/a78-17-text.html#art02

Data Protection Directive 1995

Article 15

Member States shall grant the right to every person not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc.

Source: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:html

§ 6a Federal Data Protection Act 2001

"Decisions which have legal consequences for the data subject or which significantly affect them must not be based solely on the automated processing of personal data intended to evaluate individual personality traits. A decision is deemed to be based solely on automated processing, in particular, where no substantive assessment has been carried out by a natural person, nor has a decision been taken on the basis of such an assessment."

Source:
https://dejure.org/gesetze/BDSG_a.F./6a.html
https://www.datenschutzzentrum.de/uploads/privatwirtschaft/20081201-scoring-verdikt.pdf

Art. 22 GDPR

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. (…)

Autoriteit Persoonsgegevens: Uber fined 825 million Euros

Uber fined nearly 825 million euros for automated driver blocking

21 August 2026 Themes: Algorithms explained, Working in the transport sector

The Autoriteit Persoonsgegevens (AP), the Dutch data protection authority, imposes a fine of 824,990,000 euros on Uber. The reason for this is that the AP has ruled that Uber made fully automated decisions about drivers. In case of suspicions of fraud or customer reviews that were too low, drivers' accounts were automatically temporarily deactivated or, in case of persistent low customer reviews, permanently deactivated. As a result, their income was lost via Uber during the deactivation.

Source: https://www.autoriteitpersoonsgegevens.nl/en/current/uber-fined-nearly-825-million-euros-for-automated-driver-blocking

“Decision based solely on automated processing”

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. (…)

Recital 71: “(…) without any human intervention (…)”

Open questions:

- What is a decision based solely on automated processing?
- What does human intervention require?

“Legal effects (…) or similarly significantly affects him or her”

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.** (…)

Recital 71: “(…) automatic refusal of an online credit application or e-recruiting practices (…)”; “(…) analyse or predict aspects concerning the data subject’s performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements (…)”

Open questions:

- What does „legal effects concerning him/her“ mean?
- Unclear/subjective terminology around „similarly significantly affects him/her?

Summary

- Imprecise terminology in Article 22 GDPR
- „Automated decision making“: does it make sense to cover deterministic and probabilistic decision making?
- Is human decision making really better?
- Would it not be better to focus on transparency requirements and human intervention if a decision is challgened by the data subject?

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