

# ACCIS Annual Conference 13. - 14. June 2019 Athens

Enabling trust through the consumer decision  
journey





# Agenda

01

**GDPR – (Legal) specifics for credit reference agencies (CRA)**

02

**Profiling**

03

**Transparency**

04

**GDPR Evaluation 2020 – Commission's questionnaire**

01

# **(Legal) specifics for credit reference agencies (CRA)**

# (Legal) specifics for credit information suppliers

- Principles relating to processing of personal data, Art. 5 GDPR
  - Transparency
  - Accuracy
  - Storage limitation
    - „...no longer than necessary....“
    - Art. 17 „....no longer necessary...“
    - Recital 39 „.... In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review....“
    - Code of Conduct
- Lawfulness of processing, Art. 6 Subs. 1 GDPR
  - Consent ?, Art. 7 GDPR
    - Freely given?
  - Legitimate interest clause, Art. 6 Subs. 1 lit. f) GDPR
- Rights of data subject
  - Chapter III
  - Art. 20 ?
  - Automated individual decision-making, including profiling, Art. 22 GDPR?

02

# Profiling

# Profiling

- Definition, Art. 4 Nr. 4
  - “....economic situation....”
- Lawfulness of processing
  - Recital 72: “Profiling is subject to the rules of this regulation governing the processing of personal data, such as **the legal grounds for the processing or data protection principles**”
  - Legitimate interest clause, Art. 6 Subs. 1 lit. f)
    - Standard?
      - Recital 71: (“...economic situation ....”).(“...appropriate mathematical or statistical procedures...”)
      - Former § 28b DPA-Germany
      - *Finnish DataProtection Ombudsman*: “ .. The **mere age** of the credit applicant does not describe their solvency, willingness to pay or ability to deal with their commitments”
- Automated decision-making, Art. 22
  - Also Profiling?
- DPIA, Art. 35
  - Recital 91: “.....profiling....”

03

# Transparency

# Transparency Art. 12 – 14 GDPR

- Principle, Art. 5 Subs. 1 lit. a) “...and in a transparent manner..”
- Modalities, Art. 12
  - Change of media?
  - Short notice (letter and/or e-mail) and additional link – meanwhile agreed by the German DPA
  - Information given with terms & conditions via the creditors
- Information, Art. 13, Art. 14
  - Extended information obligations
    - Art. 13 Subs. 2 lit. f, Art. 14 Subs. 2 lit. g, Art. 15 Subs. 1 lit. h
      - Same wording in respect to Art. 22 and Profiling
      - Unclear; *Finland*: “...current notification practices do not sufficiently specify the logic of data processing so that the credit applicant could understand the grounds for the decision and ordered that such notification practices be changed....”
- Only few exceptions
  - Disproportionate effort
  - *Poland*
- Exceptions possible, Art. 23
  - Public registers?



# Transparency Art. 12 – 14 GDPR

## SCHUFA Information Art. 14/15 GDPR incl. Score Explanation

- Provides the data subject with structured information regarding the content required under Art. 14/15 Subs. 1 GDPR
- Contains detailed information on scoring under No 4

### SCHUFA Information

- Name and contact information for the controller as well as the company data protection officer**  
SCHUFA Holding AG, Körnerweg 3, 6820 Vilshausen, Tel.: +49 (0) 6 11 92 73 0  
The SCHUFA company data protection officer can be reached at the address listed above, str. Department of Data Protection or by sending an email to [datenschutz@schufa.de](mailto:datenschutz@schufa.de).
- Data processing by SCHUFA**
- Purpose of data processing and legitimate interests pursued by SCHUFA or a third party**  
SCHUFA processes personal data in order to provide recipients with a legitimate interest information needed to evaluate the creditworthiness of individuals and legal entities. This also involves calculating and transmitting scores. Only precise information if a legitimate interest in such information is clearly demonstrated in a particular case and if the processing of such information is permissible after weighing up all of the interests involved. A legitimate interest involves, but is not limited to a scenario involving entering into transactions with a third party (such as a credit assessment) or to protect the recipient from issues in the lending business and, at the same time, provide an opportunity to protect borrowers from unnecessary investigations, by providing advice. Furthermore, data is processed for purposes of fraud prevention, credit assessment, credit monitoring, identity and age verification, address identification, customer service and management, as well as pricing of conditions.  
In addition to the aforementioned purpose, SCHUFA also processes personal data for internal purposes (e.g. assertion of legal claims and defense in legal disputes, general business management and further development of services and products, ensuring IT security and IT operations), in legitimate interest in such processing, insofar as the purposes in question and its interests of a commercial nature (efficient performance of tasks, avoiding legal risks).
- pursuant to Article 14 (4) GDPR, SCHUFA will provide information regarding any changes to the purposes for which it processes data.**
- Legal bases for data processing**  
SCHUFA processes personal data on the basis of the provisions of the general data protection regulation. Data is processed on the basis of consent as well as on the basis of Article 6 (1) GDPR provided that processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party and such interests are not overridden by the interests, rights and freedoms of the data subject which require protection of personal data. Consent can be revoked at any time by submitting a corresponding declaration to the contractual partner in question. This also applies to consent provided prior to the effective date of the GDPR. The revocation of consent does not affect the legality of personal data processed prior to revocation.
- Data source**  
SCHUFA receives its data from its contractual partners. They include institutions, financial companies and payment service providers, domiciled in the European Economic Area and Switzerland, as well third countries as applicable (to the extent an association decision on three countries made by the European Commission is available; that are expected to be a financial default risk (e.g. loans, savings banks, cooperative banks, credit card, financing and leasing companies, as well as additional contractual partners that use SCHUFA products for the purpose described in section 2), in particular, third order, retailers, e-commerce companies, service providers (leasing, energy, supply, telecommunications, insurance or debt collection companies). Furthermore, SCHUFA processes information from generally accessible sources such as public registries and official publications (e.g. district registries, electronic announcements).
- Categories of personal information that is processed (personal data, payment history and contractual compliance)**
  - personal data, e.g. surname (including any previous names that may be obtained upon special request), given name, date of birth, place of birth, address, prior addresses
  - information regarding the initiation and execution of a transaction in accordance with the contract (e.g. current accounts, installment loans, credit cards, payment-instrument accounts, basic accounts)
  - information regarding unresolved, pending claims subject to repeated during or legally enforceable claims and their resolution
  - information regarding improper or otherwise inadmissible activities such as identity theft or credit rating fraud
  - information from public registries and official publications
  - Scores
- Categories of recipients of personal data**  
Recipients comprise other parties pursuant to section 2.3 mentioned in the European Economic Area and Switzerland, as well other third countries as applicable (to the extent an association decision made by the European Commission is available for such countries). Additional recipients can include external contractors of SCHUFA pursuant to Article 28 GDPR, as well as external and internal SCHUFA recipients. SCHUFA is also subject to the statutory powers of intervention held by public authorities.
- Duration of data storage**  
SCHUFA stores information about individuals for a certain period only.  
Necessity to the retention period used to define this period. SCHUFA has determined storage periods for a review of the necessity of further storage and/or secure of personal data. Based on these rules, the general storage period for personal data is three years, to the day upon the date of which the corresponding activities were completed. The following information is an example of some storage periods:
  - information regarding unrepaid, review interests to the day
  - information regarding repaid or contractual data relating to accounts documented without the associated claim (e.g. current accounts, credit cards, telecommunications accounts or energy accounts). Information regarding contracts for which an eventuality review is provided to us (e.g. accounts, interest free guarantees, basic accounts, as well as guarantees and saving accounts that are maintained on the credit side, immediately after termination.
  - Data from sector registers of the central enforcement courts: three years to the day, but earlier if SCHUFA is provided with evidence of

SCHUFA Information PDF  
English, V.1.1

December 2018

1/12

# Transparency Art. 15 GDPR

- Right of access by the data subject
  - Art. 15 Subs. 3
    - “.....copy.....”?
      - Copy of personal data not copy of documents
- “.....electronic form.....”?
  - Webcode provided with the credit-report (snail-mail)

# 04

## **GDPR Evolution 2020 – Questionnaire of the Commission**

# GDPR Evaluation 2020 – Questionnaire of the Commission

## Art. 97 Commission Reports

- “By 25 May 2020 and every four years thereafter, the Commission shall submit a report on the evaluation and review of this Regulation to the European Parliament and to the Council.”
- “...”
- “The Commission shall, if necessary, submit appropriate proposals to amend this Regulation, in particular taking into account of developments in information technology and in the light of the state of progress in the information society.”
- Kick-off-Meeting DPF 13th March 2019
  - Olivier Micol, DG Just, Head of Data Protection Unit
  - Invitation to answer the questionnaire

# GDPR Evaluation 2020 – Questionnaire of the Commission

## Main issues and the answers

### Main Comments

GDPR readiness was taken very seriously, with most CRAs running multi-annual compliance programmes before the date of application of GDPR.

- Identification of all the treatments of data and the data assets of the company, including considerations of the legal grounds for processing data, data retention periods, etc.
- Updating or creating privacy notices to meet the GDPR transparency requirements.
- Implementing new procedures to cope with the new data subject rights and the obligations to demonstrate compliance under Article 5(2).
  - Art. 20
  - increase of cases (Art. 15, 17, 21 Subs. 1), but no representative action under Art. 80
- Clarification of Controller and Processor agreements with suppliers and customers
  - All contracts were updated to GDPR and national law
  - No revised SSC so far

# Conclusion

## Our Industry

- has a legal basis
- is compliant in profiling
- fulfills the transparency obligation
- is in contact and dialogue with the DG Just

# Thank you.

We look forward to hearing from you.

## Speaker

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